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NAVAL POSTGRADUATE SCHOOL

MONTEREY, CALIFORNIA

THESIS

MARITIME LAW ENFORCEMENT: A CRITICAL CAPABILITY FOR THE NAVY?

by

Dirk C. Sonnenberg

March 2012

Thesis Advisor: Erik Dahl
Second Reader: Jeff Kline

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This thesis asks the questions: Are our maritime organizations organized and employed properly to ensure our nation's maritime security? Should maritime law enforcement be considered a critical capability for the Navy? Maritime security is not only a priority mission in the national and naval strategy, but for the international maritime community as well. It is established that law enforcement presents the best means to achieve maritime security. By accepting the maritime law enforcement role, the Navy may help close maritime security gaps not only in the homeland but also on the maritime global commons. Therefore, it is important to understand the effects of the Navy's lack of law enforcement powers on maritime security operations and maritime security as a whole. The thesis identifies gaps, shortfalls, and deficiencies in both the Navy's maritime security operations, and maritime security as a whole, due to the restrictions on law enforcement roles. It also analyzes the concerns associated with increased law enforcement and maritime security roles for the Navy by covering the operational, fiscal, and warfighting readiness costs associated with greater maritime security roles. Together this will help to determine whether the Navy should consider law enforcement as a critical capability and resource it as such.

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MARITIME LAW ENFORCEMENT: A CRITICAL CAPABILITY FOR THE NAVY

Dirk C. Sonnenberg
Lieutenant, United States Navy
B.A., University of Arizona, 2004

Submitted in partial fulfillment of the
requirements for the degree of

**MASTER OF ARTS IN SECURITY STUDIES
(HOMELAND SECURITY AND DEFENSE)**

from the

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March 2012**

Author: Dirk C. Sonnenberg

Approved by: Dr. Erik Dahl
Thesis Advisor

CAPT Jeffery Kline (USN, Ret.)
Second Reader

Dr. Daniel Moran
Chair, Department of National Security Affairs

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ABSTRACT

This thesis asks the questions: Are our maritime organizations organized and employed properly to ensure our nation's maritime security? Should maritime law enforcement be considered a critical capability for the Navy? Maritime security is not only a priority mission in the national and naval strategy, but for the international maritime community as well. It is established that law enforcement presents the best means to achieve maritime security. By accepting the maritime law enforcement role, the Navy may help close maritime security gaps not only in the homeland but also on the maritime global commons. Therefore, it is important to understand the effects of the Navy's lack of law enforcement powers on maritime security operations and maritime security as a whole. The thesis identifies gaps, shortfalls, and deficiencies in both the Navy's maritime security operations, and maritime security as a whole, due to the restrictions on law enforcement roles. It also analyzes the concerns associated with increased law enforcement and maritime security roles for the Navy by covering the operational, fiscal, and warfighting readiness costs associated with greater maritime security roles. Together this will help to determine whether the Navy should consider law enforcement as a critical capability and resource it as such.

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LIST OF ACRONYMS AND ABBREVIATIONS

AFRICOM	U.S. Africa Command
AMIO	Alien Migrant Interception Operations
AMLEP	African Maritime Law Enforcement Partnership
AMOC	Air & Marine Operations Center
ANNUALEX	Annual Exercise
AOR	Area of Responsibility
BALTOPS	Baltic Operations Exercise
CANG	California Army National Guard
CBP	Customs and Border Protection
CG	Guided Missile Cruiser
CIA	Central Intelligence Agency
CIC	Confronting Irregular Challenges
CJCS	Chairman of the Joint Chiefs of Staff
CJCSI	Chairman of the Joint Chiefs of Staff Instruction
CNO	Chief of Naval Operations
COCOM	U.S. Combatant Command
CONOPS	Concept of Operations
CVN	Nuclear Aircraft Carrier
DDG	Guided Missile Destroyer
DHS	Department of Homeland Security
DoD	Department of Defense
DoS	Department of State
DoN	Department of the Navy
DODD	Department of Defense Directive
DOTMLPF	Doctrine, Operations, Training, Manning, Leadership and Facilities
EEZ	Exclusive Economic Zone
EMIO	Expanded Maritime Interception Operations
EUCOM	U.S. European Command
EXORD	Execute Order

FBI	Federal Bureau of Investigation
FFG	Guided Missile Frigate
FY	Fiscal Year
HMS	His/Her Majesty's Ship
HSPD	Homeland Security Presidential Directive
ICE	Immigration Customs Enforcement
IMO	International Maritime Organization
ISPS	International Ship and Port Facility Security
IUU	Fishing Illegal, Unreported, and Unregulated Fishing
JCSCSG	USS John C. Stennis Carrier Strike Group
JIATF	Joint Interagency Task Force
JIATF-S	Joint Interagency Task Force - South
JTF	Joint Task Force
JTF-LA	Joint Task Force Los Angeles
LAPD	Los Angeles Police Department
LCS	Littoral Combat Ship
LE	Law Enforcement
LEA	Law Enforcement Agency
LEDET	Coast Guard Law Enforcement Detachment
LEO	Law Enforcement Operations
LOAC	Law of Armed Conflict
LSD	Landing Ship Dock
MCAST	Maritime Civil Affairs and Security Training
MDA	Maritime Domain Awareness
MIO	Maritime Interception Operations
MLE	Maritime Law Enforcement
MOTR	Maritime Operational Threat Response
MPC	Multilateral Planners Conference
MSO	Maritime Security Operations
MTS	Marine Transportation System
MTT	Mobile Training Teams

NCB-VBSS COI	Non-Compliant Boarding, Visit, Board, Search and Seizure Team Trainer Course of Instruction
NCIS	Naval Criminal Investigative Service
NECC	Naval Expeditionary Combat Command
NIWO	Navy Irregular Warfare Office
NMIC	National Maritime Intelligence Center
NMS	National Military Strategy
NOA	Notice of Arrival
NOAA	National Oceanic and Atmospheric Administration
NSC	National Security Cutter
NSMS	National Strategy for Maritime Security
NSPD	National Security Presidential Directive
NWDC	Naval Warfare Development Command
OCO	Overseas Contingency Operations
OEF	Operation Enduring Freedom
OIF	Operation Iraqi Freedom
OIG	Office of Inspector General
OPAREA	Operations Area
OPC	Offshore Patrol Cutter
OPCON	Operational Control
OPNAV	Office of the Chief of Naval Operations
OPTEMPO	Operations Tempo
PACOM	U.S. Pacific Command
PCA	*Posse Comitatus* Act
PSI	Proliferation Security Initiative
RIMPAC	Rim of the Pacific Exercise
ROE	Rules of Engagement
SEACAT	Southeast Asia Cooperation Against Terrorism
SECDEF	Secretary of Defense
SECNAV	Secretary of the Navy
SECNAVINST	Secretary of the Navy Instruction
SROE	Standing Rules of Engagement

SRUF	Standing Rules for the Use of Force
SUA	1988 Convention for Suppression of Unlawful Acts Against the Safety of Maritime Navigation
TIP	Trafficking in Persons
TSC	Theater Security Cooperation
TTP	Tactics, Techniques and Procedures
UAV	Unmanned Aerial Vehicle
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNSCR	United Nations Security Council Resolutions
USC	United States Code
USCENTCOM	U.S. Central Command
USS	United States Ship
USSOUTHCOM	U.S. Southern Command
VBSS	Visit, Board, Search, and Seizure
WMD	Weapons of Mass Destruction

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I. INTRODUCTION

A. MAJOR RESEARCH QUESTIONS

This thesis asks the question: Are our maritime security organizations—including the Navy, Coast Guard, and other organizations—properly organized and employed to ensure our nation's maritime security? Second, should maritime law enforcement be considered a critical capability for the U.S. Navy? The argument is that by accepting the maritime law enforcement role, the Navy may help close maritime security gaps not only in the homeland but also on the maritime global commons. The possible implications for the U.S. Navy are the removal of the barriers preventing law enforcement activity, integrating the Coast Guard deeper into naval operations (and likewise the Navy in Coast Guard operations), putting into action the organizational and structural changes needed to better meet stated strategic priorities and using law enforcement training, operations, and cooperation to help secure the maritime commons.

B. IMPORTANCE

1. The Threat

Transnational forces and irregular challenges continue to be the primary threat today and for the foreseeable future,[1] especially in the maritime domain. These challenges are maritime-related terrorism, weapons proliferation, transnational crime (illicit trafficking), piracy, environmental/resource destruction, and illegal seaborne immigration.[2] In order to confront these challenges, it is important to understand the nature of the irregular challenges we face. The inherent criminal nature of irregular maritime threats links them closer to maritime law enforcement oriented missions, rather than conventional military ones. These challenges, as Dick Bedford eloquently testifies, "will continue to evolve and may be hybrid in nature: an interconnected and

[1] Barack Obama, *2010 National Security Strategy* (Washington, D.C.: White House, 2010), 4.

[2] U.S. Chief of Naval Operations, Commandant of the Coast Guard, and Commandant of the Marine Corps, *Naval Operations Concept 2010* (Washington, D.C.: GPO, 2010), 35.

unpredictable mix of traditional and irregular warfare, terrorism, and/or organized crime."[3] Since the global and United States maritime domain is of vital importance to the security and economic well-being of the country and the world, the need for robust maritime security utilizing law enforcement capabilities is in demand.

2. National Concern

The significance of nontraditional challenges, which are the types of challenges best confronted through law enforcement, is well established in higher national strategic doctrine. Not surprisingly, these challenges top the list of concerns set out on almost every important statement of national and military strategy and policy. The 2010 *National Security Strategy* clearly advocates that irregular threats, such as weapons of mass destruction (WMD) (especially in the hands on violent extremists), terrorism, consequences of environmental change, and global criminal networks (pirates, drug cartels, etc.) represent the greatest to threat American security and safety.[4] These threats need to be prevented through the use of intelligence and law enforcement.[5] This document is a key piece of national strategy because it represents the pinnacle from which other sources of government strategy are derived. The 2011 *National Military Strategy* (NMS 11) is the lead strategy-shaping document for the military and lists countering violent extremism first among the National Military Objectives.[6] Violent extremism is the epitome of irregular challenges that the United States faces. Among the three remaining National Military Objectives,[7] the reference to irregular challenges is pervasive.[8] It seems quite clear that irregular challenges are considered a top priority in

3 Dick Bedford, "The Changing Security Environment," in Scott Jasper (ed.), *Securing Freedom in the Global Commons* (Stanford, CA: Stanford Security Studies, 2010), 38.

4 Obama, 2010 *National Security Strategy*, 8.

5 Ibid., 20.

6 Chairman of the Joint Chiefs of Staff (CJCS), *National Military Strategy 2011: Redefining America's Military Leadership* (Washington, D.C.: GPO, 2011), 4.

7 The four National Military objectives are: Counter Violent Extremism, Deter and Defeat Aggression, Strengthen International and Regional Security, and Shape the Future Force.

8 CJCS, 2011 *National Military Strategy*, 4–20.

national security. This establishes that confronting irregular challenges, especially through law enforcement, is a security goal of the United States.

3. International Concern

Maritime Security is just a concern for the United States, but it is the most important concern for most maritime nations. As a study from RAND states, "Partner nations will wish to work with the U.S. Navy to meet their hierarchy of needs, which lie almost exclusively within the constabulary role."[9] A National Research Council paper affirms, "Governments of countries other than the United States tend to be concerned much more with the need for information on traditional maritime security concerns—smuggling, poaching, and piracy—rather than information on direct threats of external attack."[10] A paper on the roles of African Maritime Security Forces roles mentions that, "A much larger part of their mission set is coast guard in nature and relates to law enforcement, environmental protection, and maritime safety obligations that occur within a nation's territorial waters (within 12 nautical miles of the coastline) and exclusive economic zone." [11] Lastly, at the Nineteenth International Seapower Symposium, maritime security was recognized as the most important focus for almost all maritime nations.[12] For the Navy to operate globally and interact with partner navies in Global Maritime Partnership programs, it is important to recognize that maritime security is what concerns the international maritime community the most.

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[9] Robert Button, *Small Ships in Theater Security Cooperation* (Santa Monica, CA: RAND National Defense Research Institute, 2008), 16 http://site.ebrary.com/id/10235188.

[10] National Research Council, *Maritime Security Partnerships* (Washington, D.C.: National Academies Press, 2008), 1–2. http://www.nap.edu/catalog.php?record_id=12029.

[11] Augustus Vogel, *Navies Versus Coast Guards Defining the Roles of African Maritime Security Forces* (Washington, DC: Africa Center for Strategic Studies, 2009), 2–3 http://purl.access.gpo.gov/GPO/LPS119655.

[12] International Seapower Symposium, John B. Hattendorf, and John W. Kennedy, *Nineteenth International Seapower Symposium: Report of the Proceedings 6-9 October 2009* (Newport, R.I.: Naval War College, 2010). http://www.usnwc.edu/getattachment/87a12ec8-2e67-46e2-8fd6-b037c7df41c4/ISS19_Web.

4. U.S. Maritime Security Policy

U.S. maritime security policy is split into two somewhat related categories—defense and security—with the Department of Defense as the lead agency for maritime defense, and the Coast Guard as the lead agency for maritime security, including maritime law enforcement. Despite this difference of roles, maritime challenges can be deemed as both defense and security missions, creating overlaps that are difficult to resolve with current national policy and doctrine. A Congressional Research Service report demonstrates that seven key Navy missions are considered both homeland security and homeland defense missions,[13] since the same threats can exist in both sets of missions. Even the DoD labels this as a "seam of ambiguity," where the threat is not clearly defined between a military and law enforcement missions.[14] This leads to the question, who should take the lead in responding to situations given that transnational actors no longer present a clear external versus internal threat? Interagency cooperation and coordination through supported/supporting roles is the current maritime security approach, but is it as efficient as it can be? Possibly, if the Navy accepts law enforcement as a necessary instrument to confront maritime security threats, it could ease the confusing mission overlaps, eliminate the jurisdictional seams, and increase response time and threat coverage.

Driven by Posse Comitatus and its related DoD instructions restricting military forces role in law enforcement, and by its traditional norms, the U.S. Navy has consistently shied away from law enforcement activities. Instead, the U.S. Navy prefers to focus on maintaining conventional forces overseas, as a first line of defense.[15] The United States is unique in the separation of law enforcement functions and military functions in the maritime service. Many European Navies, including the British Royal Navy, French Navy, Spanish Navy, and others, are mandated to conduct maritime law

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13 Ronald O'Rourke, *Navy Force Structure and Shipbuilding Plans: Background and Issues for Congress*, CRS RL32665 (Washington, DC: The Service, 2010), 3.

14 United States Northern Command (USNORTHCOM), *Department of Defense Homeland Defense and Civil Support Joint Operating Concept: Version 2.0* (Peterson AFB, CO: Strategy and Policy Division (J52), USNORTHCOM, 2007) 13.

15 *Naval Operations Concept 2010*, 25.

enforcement activities. Even the United States' neighbors, Canada and Mexico, utilize their navies for maritime law enforcement.[16] So, why does the U.S. Navy not perform law enforcement? The Navy defers on law enforcement matters to the Coast Guard, using the Posse Comitatus Act as its rationale. From a long-standing tradition of not conducting maritime law enforcement, the Navy likely developed organizational norms and a culture that make it difficult to think and act in new ways that may better suited for the maritime domain of today and the future. Organizational norms, laws, and directives have created barriers that prevent the Navy from understanding how it can improve security in the maritime domain.

C. PROBLEMS AND HYPOTHESES

1. Scenarios

Two scenarios, one hypothetical and the other real highlight the potential failings in U.S. Navy maritime security prosecution.

Imagine this hypothetical situation: A U.S. Navy vessel is conducting routine exercises in the Gulf of Mexico. In the course of training, the U.S. Navy ship happens to approach a vessel transiting in the Gulf. The vessel begins to behave strangely, by suddenly shifting away from the Navy vessel, as if trying to avoid it. The lookouts on the Navy ship watch the vessel and notice people dumping cargo into the water, as it tries to move away from the Navy ship. For the Navy crew, the realization sets in they have just stumbled on a drug-trafficking boat. The drug-boat is most likely dumping its cargo for fear their boat will be boarded and inspected by the Navy warship. Unfortunately, this Navy ship has not been assigned any law enforcement officials or a Coast Guard Law Enforcement Detachment (LEDET) that can actually conduct law enforcement functions, because the Navy ship is just conducting routine training. It is not routine to deploy with

16 Laurence M Hickey, "Enhancing the Naval Mandate for Law Enforcement: Hot Pursuit or Hot Potato?," *Canadian Military Journal* 7, no. 1 (Spring 2006), 43.

LEDETs, or other law enforcement agencies (LEAs), unless specifically assigned to conduct counter-drug operations or law compliance operations. So, what can the Navy ship do?

The answer is practically nothing—due to U.S. Navy law enforcement restrictions. Instead, the Navy vessel will contact Navy headquarters to initiate a report, which will eventually find its way to the U.S. Coast Guard, who are legally entitled to intercept, search, and, seize the drug boat and its crew. Otherwise, the Navy ship can try to intimidate the drug ship, in order to attempt it to dump its cargo. By the time the U.S. Coast Guard can respond (assuming there was a U.S. Coast Guard vessel nearby that could respond in a timely manner), all evidence that can be used to convict the drug-traffickers has been disposed of.

In fact, it turns out this scenario is not very hypothetical,[17] meaning that this type of scenario can occur. Even though the drugs never entered United States, which can be considered a partial victory, the drug boat and crew are free to attempt smuggling drugs again and any potential intelligence is lost. The ideal and desired outcome of prosecution and seizure is lost.[18] Can the U.S. Navy feel satisfied with the outcome of this situation? More importantly, can American citizens feel comfortable with this situation, knowing a symbol of American power and security can only helplessly standby and watch this incident occur? The answer is most likely not. Unfortunately, the inability to adequately address these situations is a reality of the current situation.

Second is a real-world piracy example, where the U.S. Navy *is legally allowed* to perform law enforcement, as permitted by international law. Despite legal law

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[17] In September of 2011, the USS Sampson, while conducting training exercises, happened upon a drug smuggling boat. As the USS Sampson approached the boat, it jettisoned approximately 60 bales of drugs and sped from the area. In this case, the Navy was able to recover the drugs but could not give pursuit and capture the vessel because it did not have law enforcement powers to do so, Instead, the Navy sent a P-3 Orion aircraft to track the boat, and the Coast Guard deployed a helicopter and a cutter to the scene. This disposition of the boat is unknown. Gidget Fuentes, "Destroyer Recovers Illicit Drugs at Sea," *Navy Times*, September 27, 2011, http://www.navytimes.com/news/2011/09/navy-destroyer-recovers-illicit-drugs-at-sea-092711w/.

[18] Department of Homeland Security (DHS), *Maritime Operational Threat Response Protocols* (Washington, DC: Department of Homeland Security, 2010), 13.

enforcement authority and a mandated anti-piracy mission, inexperience and poor training has sometimes failed to achieve desired prosecution of piracy cases. In 2009, the U.S. Navy had to release captured pirates because they failed to collect enough evidence to go to trial in a Kenyan courts, despite the fact the U.S. Navy ships captured them while they were attacking a merchant vessel.[19] Shortly after, the USS Ashland and USS Nichols were attacked in 2010 by Somali pirates, leading to the subsequent arrest of the attackers.[20] The outcome of the trials was very different—in large part because of the evidence collection on the part of the ship's company. The USS Nichols, through their own careful preparation, and with the help of Naval Criminal Investigation Service personnel onboard who had provided training and expertise to the crew, collected evidence that swiftly led to the conviction of the pirates who attacked the ship.[21] The USS Ashland neither conducted the same preparations, nor had law enforcement officials onboard who could provide the necessary law enforcement training, crucial to these piracy cases. Poor evidence collection and custody techniques[22] have prevented the United States from getting piracy convictions from the USS Ashland pirates, who are still awaiting trial for other charges.[23]

Transnational forces and irregular challenges continue to be the primary threat today and for the foreseeable future,[24] especially in the maritime domain. The scenarios only cover two types of national security threats on the maritime domain, but the restrictions and undesirable outcomes can be applied across the range of threats.

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19 Jeff Kline, "Maritime Security," in *Securing Freedom in the Global Commons*, ed. Scott Jasper (Stanford, CA: Stanford Security Studies, 2010), 78.

20 U.S. 5th Fleet Public Affairs, "USS Ashland Captures Pirates," *Navy News*, April 4, 2010, http://www.navy.mil/search/display.asp?story_id=52519.

21 James Kraska, *Contemporary Maritime Piracy: International Law, Strategy, and Diplomacy at Sea* (Santa Barbara, CA: Praeger, 2011), 114.

22 The USS Ashland did not receive the same training and had over 12 people within the chain-of-custody of the evidence, leading to virtual dismissal of the evidence in court. The evidence was key in establishing that the accused conducted an act of piracy. Lieutenant Junior Grade Chad Hutchins, in discussion with author, Monterey, CA, August 25, 2011. Lieutenant Junior Grade Chad Hutchins is the USS Nichols Visit, Board, Search, and Seizure Officer who was involved directly with the case.

23 Kraska, *Contemporary Maritime Piracy*, 114.

24 Barrack Obama, *2010 National Security Strategy* (Washington, D.C.: White House, 2010), 4.

2. The Problems

The scenarios highlight a few potential problem areas for maritime security in the maritime domain: To what degree is the U.S. Navy constrained in confronting irregular challenges due to the prevailing criminal nature of the challenges that are law enforcement mission oriented? Does the Navy have the capability to conduct law enforcement missions if need be? Is interagency support enough to cover the legal authorities gap? Lastly, maritime law enforcement agencies are spread thin in the maritime domain. For example, the Coast Guard's current focus on maritime security has reduced its capability to perform some of its other important traditional functions.[25] Can adding law enforcement capability to Navy units help relieve some of the pressure; therefore, improving maritime security? Even if law enforcement roles were to help maritime security, what are concerns on the effects of law enforcement on the Navy's operations, fiscal costs, and warfighting readiness? These are important issues that need further insight given the threats to the maritime domain.

Are the current policies regarding how the United States prosecutes maritime security sufficient? This is both an operational problem and a cost problem. Operationally, we must determine whether there are vulnerabilities in current maritime security enforcement. For example, given the criminal nature of the majority of irregular challenges, are there missed security opportunities because the U.S. Navy could not act due to legal and jurisdictional reasons? Could enabling U.S. Navy vessels with the same maritime law enforcement capability as U.S. Coast Guard units increase economies of force in maritime law enforcement, and therefore, enhance maritime governance internationally? Despite best practices and even some demonstrated victories, there are seams and gaps in the operational aspects of maritime security that can be exploited.

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[25] Stephen L. Caldwell, *Coat Guard: Observations on the Fiscal Year 2010 Budget and Related Performance and Management Challenges*, (2009); Joe Stephens and Mary Pat Flaherty, "Coast Guard Feels The Strain of Greater Workload," *Washington Post*, August 13, 2010, http://www.washingtonpost.com/wp-dyn/content/article/2010/08/12/AR2010081206550.html.

Therefore, enabling maritime law enforcement capacity should help reduce potentially exploitable areas, increase maritime law enforcement presence, reduce jurisdictional/legal limitations, and better streamline resources.

In terms of cost, there are perceived fiscal, operational, and warfighting readiness costs linked to making law enforcement a U.S. Navy capability. Examples include training and using expensive military resources to conduct law enforcement, reduction in readiness of conventional mission areas, and the potential to misjudge what the greatest strategic threat to the maritime domain is. This leads to the question: Is the Navy's current role of support to maritime law enforcement the best compromise of cost and benefit?

3. Hypotheses

The first hypothesis is that the current situation is not the optimal strategy, but that benefits can be gained relative to the potential cost. These costs are partly related to the organizational and fiscal barriers that have prevented the Navy from conducting maritime law enforcement. Most of the perceived cost problems can be resolved by removing these barriers. The problems can be further addressed by the potential implications that stem from removing those barriers.

The second hypothesis is that the Navy's restrictions in law enforcement do create gaps, shortfalls, and deficiencies in maritime security operations at home and abroad. In order to determine if there are any seams created by restrictions on the Navy law enforcement, it requires a look at how the Navy conducts maritime security operations. This will include what capacity, capabilities, and authorities the Navy has to conduct maritime security.

The third hypothesis is that costs to developing law enforcement roles are worth the benefit gained in the improvement of maritime security. This will require identifying the costs and concerns relating to maritime security and analyzing the evidence to determine if they do indeed have credence.

The implications for enabling Navy law enforcement capability will rely on a discussion of the possible changes and trends that could take place within Navy. Some examples include: Navy realization that the fleet structure is not conducive to combating maritime threats, greater cooperation and integration with the Coast Guard in operations and jurisdictional areas, reduction in the gaps and seams, and better opportunities for commonality with other law enforcement agencies domestically and other navies internationally to make maritime security more effective.

D. LITERATURE REVIEW

Law enforcement is widely understood to be a critical tool in combating criminal activities such as illicit trafficking, piracy, and fisheries enforcement. Law enforcement is also crucial in dealing with terrorism. As Bruce Hoffman and Jennifer Morrison-Taw point out, one of the most common counter-terrorism tactics is the enactment of anti-terror legislation to expand the reach of law enforcement agencies.[26] This helps underscore the importance of law enforcement to confront terrorism. Richard English states, "the usual mechanisms of law can indeed contribute very significantly to, at least, the containment or restriction of terrorism."[27] One of those important mechanisms is law enforcement. Daniel Byman explains that the United States views terrorism as a criminal activity and treats it as such.[28] The consensus is that terrorism is considered a criminal activity and needs to be prosecuted under criminal law. Another reason that criminal threats pose an increased threat is because many terrorist organizations are willing customers of criminal transnational criminal organizations. Others argue that while direct terrorist threats to maritime security are not high, there are proven connections between

26 Bruce Hoffman and Jennifer Morrison-Taw, "A Strategic Framework for Countering Terrorism," in Fernando Reinares (ed.), *European Democracies Against Terrorism: Governmental Policies and Intergovernmental Cooperation* (Aldershot, UK: Ashgate, 2000), 3.

27 Richard English, *Terrorism: How to Respond* (New York: Oxford University Press, 2009), 135.

28 Daniel Byman, *The Five Front War: The Better Way to Fight Global Jihad* (Hoboken, N.J.: John Wiley & Sons, 2008), 146.

criminal activity and the support of terrorism.[29] Martin Murphy makes the connection that terrorist activities need hard cash to operate and need to use the skills and services of criminal organizations to obtain their objectives.[30] Therefore, the challenges on the maritime domain are indeed criminal in nature or linked to criminals, and are most appropriately addressed by law enforcement.

An important piece to review is to understand what others have said about the gaps and seams in maritime security. There are two main arguments that come out of the literature: First, there is a major maritime security gap that comes from the limitations of law enforcement to address problems in the maritime domain. Most of the literature cites that maritime law enforcement organizations (in this case the Coast Guard) are overwhelmed by their responsibilities given their generally small size and limited resources.[31] There is a general consensus that the Navy and Coast Guard need to work together more closely to help overcome some of the gaps.[32] The degree of collaboration varies among scholars. Some argue the current division of labor works, but that more cooperation, communication, and exploitation of complementary skills sets are needed to

[29] Dr. Rohan Gunaratna, "Panel IV: The Threat to the Maritime Domain," in *Economics and Maritime Strategy Implications for the 21st Century*, ed. Naval War College Intercessional Conference, and Richmond M. Lloyd (Newport, R.I.: Naval War College, 2006), 88–89, http://purl.fdlp.gov/GPO/gpo2326.

[30] Martin Murphy, "Suppression of Piracy and Maritime Terrorism: A Suitable Role for a Navy?," *Naval War College Review* 60, *no. 3* (Summer, 2007), 30.

[31] Geoffrey Mones and Andrew Webb, "The Coast Guard Needs Help from the . . . Navy and Marine Corps," Vol. 130: *Proceedings* 130, no. 1 (January 2004), http://search.proquest.com/docview/205977567?accountid=12702; Charles S. Hamilton, and Patrick M. Stillman, "Charting New Seas Navy-Coast Guard Cooperation," *Joint Force Quarterly* 35, no.2 (Summer 2003), *50-57*; James Jay Carafano, "Small Boats, Big Worries: Thwarting Terrorist Attacks from the Sea," *Backgrounder*, no. 2041(June, 2007); Geoffrey Till, *Seapower: A Guide for the Twenty-First Century* (London: Frank Cass, 2004), 342-350; Lawrence J. Korb, Sean E. Duggan, and Laura Conley, *Building a U.S. Coast Guard for the 21st Century* (Washington, DC: Center for American Progress, 2010), 13.

[32] Till, *Seapower*, 351-378.

endure the safety.[33] Others argue that the Navy needs to either take a more active role in maritime security,[34] while some argue that there needs to be deep organizational changes to help cover the gap.[35]

The second gap referred to is a legal authorities gap for the Navy in maritime security missions. Very few scholars look at how the legal regime specifically affects Navy operations.[36] Most of the authors describe the legal regime (mostly under international law) for various maritime security threats or specific types of naval operations and determine what operations the Navy can or cannot legally do.[37] While it is important to identify the authorities the Navy operates under, it does not provide a holistic analysis of how the lack of law enforcement roles for the Navy affects multiple aspects of their operations.

Most of this discussion is based on the debate over the applicability of the *Posse Comitatus* Act (PCA) (which will be discussed in detail in Chapter III). There is a plethora of literature dealing with the legalities of military/Navy use in law enforcement. A majority of the legal reviews came during the early 1980s, a resurgence in the late 1990s, and early post-9/11 that have provided thorough documentation of the laws,

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[33] Collin S. Gray, "The Coast Guard and the Navy: It's Time for a "National Fleet," *Naval War College Review* 54,no. 3 (Summer 2001), 131-135.

[34] Mones and Webb, "The Coast Guard Needs Help from the . . . Navy and Marine Corps."; James Carafano, "Congress Must Act to Link Navy and Coast Guard Future," *The Heritage Foundation Web Memo* 294, (June 13, 2003), www.heritage.org.

[35] James Howe, "The Fifth Side of the Pentagon: Moving the Coast Guard," *Joint Force Quarterly* 31, (Summer 2002), http://search.proquest.com/docview/203624149?accountid=12702; Mark E. Rosen, *USN-USCG Mission Integration* (Alexandria, VA: Center for Naval Analysis (CNA), 2007).

[36] See Mark Rosen, *USN-USCG Mission Integration*. The author looks specifically at the legal authorities the Navy needs to be on the same level of authorities as the Coast Guard. This work does not provide an analysis of how the legal restriction affect operations; Kraska, *Contemporary Maritime Piracy*.

[37] Craig H. Allen, *Maritime Counterproliferation Operations and the Rule of Law* (Westport, CT: Praeger Security International, 2007); Sandra L. Hodgkinson, et al., Challenges to Maritime Interception Operations in the War on Terror: Bridging the Gap; *American University International Law Review* 22, no 4 (2007), 583–671 http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1131&context=auilr; James Kraska, "Grasping "The Influence of Law on Sea Power," *Naval War College Review* 62, no. 3 (Summer 2009), 113–135; Craig H. Allen, "The Influence of Law on Sea Power Doctrines: The New Maritime Strategy and the Future of the Global Legal Order," in *International Law and Military Operations*, ed. Michael D. Carsten (Newport, RI: Naval War College, 2008); Anonymous, "Piracy, Policy, and Law," *Proceedings* 34, no. 12 (December 2008).

policies, and legal precedents pertaining to the Navy's involvement in maritime law enforcement. A majority of the debate is based around those who oppose the restrictions imposed by PCA, and those in favor it. Those opposed to PCA argue that the changing of the security environment from traditional threats to more criminally oriented threats compels revisions of the restrictions on the military conducting law enforcement; by not doing so the military will not be flexible to confront the new challenges.[38] For those in favor of PCA, the arguments provide two paths: First is premised on a civil libertarian viewpoint that the military needs separated from civilian affairs, and that the change in security environment is not enough to warrant a change in the current system.[39] The other is based on the idea that involvement in civil affairs will decrease its warfighting effectiveness.[40]

The scholarly debate over the Navy increasing its roles in maritime security is directly concerned with the competition between maritime security and the Navy's traditional warfighting mission. One side argues that maritime security should not be conducted because it is too costly to the Navy's traditional missions.[41] The opposite side argues that the prevalence of maritime security threats should become a top priority or

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[38] Christopher A. Abel, "Not Fit for Sea Duty: The Posse Comitatus Act, The United States Navy, and Federal Law Enforcement at Sea"; Gary Felicetti and John Luce, "The Posse Comitatus Act: Liberation from the Lawyers," *Parameters* 34, no.3 (Aug 2004), 94–107; Mark Rosen, "USN-USCG Integration."

[39] Craig Trebilcock, "Resurrecting *Posse Comitatus* in the Post-9/11 World," *Army* 59, no. 5 (May 2009) 21–24. http://search.proquest.com/docview/237078565?accountid=12702.

[40] John Hillen, "Must U.S. Military Culture Reform?,"*Parameters* 29, no. 3 (Autumn, 1999) 9-23, http://search.proquest.com/docview/198011483?accountid=12702; Bryan D. Watson, "A Look Down the Slippery Slope: Domestic Operations, Outsourcing, and the Erosion of Military Culture." *Air & Space Power Journal* 22, no. 1 (2008): 93,104,127, http://search.proquest.com/docview/217770159?accountid=12702.

[41] Kimberley L. Thachuk and Sam J. Tangredi, "Transnational Threats and Maritime Responses," in *Globalization and Maritime Power*, ed. Sam Tangredi (Washington, DC: National Defense University Press, 2002), 66–67; *A Day Without Seapower and Projection Forces: Hearing before the House Armed Services Committee*, 112th Cong. (2011) (statement of Vice Admiral Bruce W. Clingan, Deputy Chief of Naval Operations, Plans and Strategy), 14; Matthew Carlton Hammond, "The Posse Comitatus Act: A Principle in Need of Renewal," *Washington University Law Quarterly* 75, no.2 (Summer 1997), http://lawreview.wustl.edu/inprint/75-2/752-10.html; Gray, "The Coast Guard and the Navy," 114. John Patch, "The Overstated Threat," *Proceedings* 134, no. 12 (December 2008), 1, http://www.usni.org/print/4067.

that costs of maritime security are not detrimental to the Navy's warfighting mission.[42] This debate is discussed in detail in Chapter V.

There is a considerable amount of literature that surrounds this thesis topic, but none directly answers the question about the operational effects of law enforcement restrictions on the Navy's maritime security operations. However, it does answer the question: Are there gaps and seams in maritime security because the Navy does not have law enforcement powers?

E. METHODS AND SOURCES

This thesis conducts a qualitative analysis of current roles and policies of the Navy and other maritime law enforcement agencies (primarily the Coast Guard) concerning how maritime security is conducted, especially in maritime law enforcement missions. When trying to determine if there are any seams or gaps present in the current maritime security operations, it investigates key areas in current operations including the authorities, capabilities, and capacity in direct and indirect approach operations, such as maritime interdiction and patrol missions and maritime security partnership programs.

The legal, organizational/cultural, and cost barriers that prevent the Navy from conducting law enforcement will also be examined. The legal analysis will include a review of current laws and policies and a discussion of arguments for and against the legal barrier. The organizational section will entail a historical analysis to see if changes in the institution have occurred, as stated in the strategic doctrine. It will need to identify the reasons why those changes have or have not occurred. The cost topic will require analysis of costs and benefits of conducting maritime security, including fiscal, operational readiness, and strategic focus/mission creep.

The thesis research is a rigorous qualitative analysis using statistical data, case studies, maritime security war games and studies conducted by the Naval War College,

[42] William Rosenau, **"**Non-traditional Missions and the Future of the U.S. Military," *Fletcher Forum of World Affairs* 18, no. 1, (Winter/Spring 1994); Thachuk and Tangredi, "Transnational Threats and Maritime Responses," 66–67.

Johns Hopkins University, the Navy Warfare Development Command,[43] and interviews with Coast Guard Headquarters, Navy Irregular Warfare Office, Office of the Chief of Naval Operations (OPNAV) N3 (Operations) and Naval Criminal Investigative Service.

Statistically determining the degree of proficiency in the Navy's operational maritime security performance is difficult, because the data is almost nonexistent. For example, if prosecution of offenders of domestic and international maritime law is the most desirable end state, as per *Maritime Security Strategy*, then a successful mission is not only the disruption of an event but also the successful prosecution of the offenders. The Navy does not analyze or retain mission data from what it considers non-Navy missions, such as law enforcement. For instance, the Navy has no reason to determine its proficiency in counterdrug operations, since they only operate in a supporting role to the Coast Guard LEDETs or other nations' law enforcement officials in order to get prosecution. The few detailed cases that were available are classified. Even where the Navy does have authorities and jurisdiction, as in anti-piracy operations, either no performance measures exist,[44] and/or, factors determining a mission's outcome is beyond the Navy's control (i.e., if the choice is made not to prosecute, it is difficult to determine if Navy actions were directly responsible).[45] Subsequently, the majority of the analysis rests on the conclusions derived from open source case studies, studies on the Navy's role in confronting irregular challenges conducted at the Naval War College, Naval Warfare Development Center, and John Hopkins University.

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[43] Navy Warfare Development Command (NWDC), *Confronting Irregular Challenges in the Maritime Environment: Scenario Based Exercise and Innovation Continuum Findings and Recommendations* (May 2010); David DellaVolpe, et al., *Irregular Challenges 2010 Game: Game Report (*September 2010); John Benedict, et al., *Confronting Irregular Challenges (CIC) Study Results* (Baltimore, MD: Johns Hopkins University Applied Physics Laboratory, 2011).

[44] U.S. Government Accountability Office (GAO), *Maritime Security: Actions Needed to Assess and Update Plan and Enhance Collaboration among Partners Involved in Countering Piracy off the Horn of Africa*, by John Pendleton and Stephen Caldewell, (GAO-10-856), Washington, DC: GPO, 2009, 17.

[45] Some pirates are released due to lack of evidence to warrant prosecution (i.e., pirates discard their equipment into the ocean), or no nation was willing to prosecute them for political/financial reasons. Lesley A. Warner, "Pieces of Eight: An Appraisal of U.S. Counterpiracy Options in the Horn of Africa," *Naval War College Review* 63, no. 2 (Spring 2010), 70.

F. THESIS ROADMAP

The first chapter introduced the major questions: Are our maritime organizations properly organized and employed properly to ensure our nation's maritime security? Should maritime law enforcement be considered a critical capability for the Navy? This chapter established that maritime security is not only a priority mission in the national and naval strategy, but for the international maritime community as well. It also established that law enforcement presents the best means to achieve maritime security. Therefore, it is important to understand the effects of the Navy's lack of law enforcement powers on maritime security operations and maritime security as a whole. The second chapter of the thesis will define what maritime security is and what it means to naval forces. It will identify the current division of labor for the naval forces in both homeland and international maritime security operations. The third chapter will conduct a law review in order to understand the authorities and restrictions that Navy operates under when conducting maritime security operations. This will help the reader conceptualize the legal environment and how law enforcement roles can possibly overcome gaps in the legal regime. The fourth chapter identifies gaps, shortfalls, and deficiencies in both the Navy's maritime security operations, and maritime security as a whole, due to the restrictions on law enforcement roles. The fifth chapter will then analyze the concerns associated with increased law enforcement and maritime security roles for the Navy. It will look at the operational, fiscal, and warfighting readiness costs associated with greater maritime security roles. The conclusion will tie the argument together as to whether or not the Navy should consider law enforcement as a critical capability and resource it as such, and provide recommendations.

II. MARITIME SECURITY DIVISION OF LABOR

A. INTRODUCTION

The intent of this chapter is to understand first, what maritime security is and the tasks involved to achieve it; and second, the current division of labor in maritime security for the U.S. Naval Services. This is accomplished by understanding the roles that both the Navy and Coast Guard play in maritime security.

Although this study is intended to focus on the Navy's roles in maritime security, this cannot be accomplished without also understanding how the Coast Guard is an integral part of the Navy's Maritime Security Operations (MSO) and maritime security as a whole. First, the U.S. Coast Guard's primary mission is maritime security, and therefore is designed to counter maritime security threats (e.g., the model service to provide comparison of skills, equipment, and authorities). Second, that state of homeland maritime security is predicated on the Coast Guard's ability to conduct homeland MSO, because the Navy primarily operates overseas. Lastly, since maritime law enforcement is not a Navy mission, the Coast Guard is the largest provider of legal authorities, maritime law enforcement capabilities, and expertise to the Navy.

B. MARITIME SECURITY AND ITS TASKS

This section will attempt to define overall maritime security and then define its meaning to U.S. naval services. While there are some unique features between homeland maritime security and global maritime security, the section will argue that maritime security cannot truly be separated between homeland and overseas, because the world's oceans are interconnected and used as a medium to travel between two places. In other words, the international affects the domestic. Lastly, this section will list the naval tasks involved with maritime security.

1. What is Maritime Security?

Maritime Security is a large and nebulous concept. There are many definitions and objectives, but the basic principles are found in the *National Strategy for Maritime Security* (NSMS): preserving the freedom of the seas, facilitate and defend commerce, maintaining good order (governance) at sea.[46] It involves actions from international, (International Maritime Organization (IMO)), public (law enforcement, and naval forces), and private (shipping companies, ports, privately contracted armed security personnel) and entities from all nations to achieve maritime security. For example, this includes safety regulations from the IMO, such as the International Ship and Port Facility Security Code (ISPS Code), shipping protection practices,[47] and naval patrols. This study focuses on the how naval forces, in particular U.S. naval forces, understand and provide maritime security. The Navy's definition of maritime security comes from the *2010 Naval Operations Concept*, which is the accompaniment to *A Cooperative Strategy for 21st Century Seapower* (the combined Navy, Coast Guard, and Marine Corps's maritime strategy). The *2010 Naval Operations Concept* states:

> *Maritime security* is… defined as those tasks and operations conducted to protect sovereignty and maritime resources, support free and open seaborne commerce, and to counter maritime related terrorism, weapons proliferation, transnational crime, piracy, environmental destruction, and illegal seaborne immigration. Effective maritime security requires a comprehensive effort to promote global economic stability and protect legitimate ocean-borne activities from hostile or illegal acts in the maritime domain. In addition to security operations along the U.S. coastline, globally-distributed naval forces conducting maritime security operations contribute to homeland defense in depth.[48]

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[46] Maritime Security Policy Coordinating Committee (MSPCC), *National Strategy for Maritime Security (*NSMS*)* (Washington, DC: GPO, 2005), 7–8.

[47] A good example of a protection practice is the *Piracy and Armed Robbery Against Ships in Water Off the Coast of Somalia*: *Best Management Practices for Protection against Somalia Based Piracy* (BMP4), which is an IMO produced booklet of suggested planning and operational practices for ship operators, and Masters transiting in high risk areas. MSC.1/Circ.1339, 14 September 2011, http://www.imo.org/OurWork/Security/PiracyArmedRobbery/Documents/1339.pdf.

[48] *Naval Operations Concept 2010*, 35.

For the naval forces maritime security, the focus is on a more direct enforcement role in confronting maritime threats and providing security.

2. Homeland vs. International

In the maritime domain, the normal construct of the homeland versus the international realm does not apply, and the domain should be viewed as one entity. The reason is that maritime threats can emanate from anywhere in the world, travel rapidly across the maritime domain, and transcend borders to threaten national and homeland security interests.[49] The National Security Presidential Directive (NSPD) - 41/ Homeland Security Presidential Directive (HSPD) -13: *Maritime Security Policy* recognizes "the security of the Maritime Domain is a global issue."[50] The *National Strategy for Maritime Security* (referred to as *Maritime Security Strategy*) erases the distinction between a separate international and homeland maritime domain in stating; "The safety and economic security of the United States depend in substantial part upon the secure use of the world's oceans," whose "waters are a single, great ocean, an immense maritime domain."[51] The definition of maritime domain from the *Maritime Security Strategy* further integrates the maritime domain by identifying the domain as "all areas and things of, on, under, relating to, adjacent to, or bordering on a sea, ocean, or other navigable waterway."[52]

3. Maritime Security Tasks

There are three key tasks for achieving maritime security laid out in the *2010 Naval Operations Concept*: Response operations, national and regional maritime cooperation, and awareness.[53] This section will identify the main activities in each task.

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49 USNORTHCOM, *Department of Defense Homeland Defense and Civil Support Joint Operating Concept*, 20.

50 George W. Bush, National Security Presidential Directive (NSPD) - 41/ Homeland Security Presidential Directive (HSPD) -13: *Maritime Security Policy* (2005), 2.

51 MSPCC, *National Strategy for Maritime Security* 1.

52 Ibid.

53 *Naval Operations Concept 2010*, 36.

a. Response Operations

Response operations (or direct approach operations) actively employ naval vessels to confront maritime threats and are the most commonly thought of as naval maritime security operations. Two types of actions make up response operations: patrols with forward presence and ship interdiction operations.

Patrols and forward presence means placing a ship or platform in an area to provide physical presence to offer deterrence, protection, and situational awareness. Naval assets can be tasked to specifically for MSO, or they can be conducted in concert with other operations.

Interdiction operations are the most direct maritime security operation because they physically involve intercepting a vessel by ship or aircraft, and if need be to board a suspect vessel. There are two main types of interception operations: Maritime interception operations (MIO) and law enforcement operations (LEO).[54] Both types of interdictions involve the same techniques of visit, board, search, and seizure, but the purpose behind both of them is different.[55]

b. National and Regional Maritime Cooperation

Maritime cooperation is an indirect approach to maritime security. It is an indirect approach because it does not directly disrupt a maritime threat, but it is meant to improve direct operation or the maritime security process as a whole. Cooperation is important because its purpose seams in maritime security between different agencies and different nations. Three types of maritime security operations fall under maritime cooperation: Maritime Operational Threat Response (MOTR), *National Fleet Policy*, and Theater Security Cooperation (TSC).[56]

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[54] *Naval Operations Concept 2010*, 43.

[55] MIO is considered a military operation for a specific national security objective, while LEO is specifically meant to enforce U.S. or other nation's laws at sea against a criminal threat, typically with the objective to prosecute the offenders in court. Department of the Navy (DON), Naval Warfare Publication (NWP) 1-14M: *The Commander's Handbook on the Law of Naval Operations* (Washington, D.C.: Dept. of the Navy, 2007), 3–8, 4–6.

[56] *Naval Operations Concept 2010*, 37–38.

Maritime Operational Threat Response is an interagency process, "which establishes protocols that facilitate coordinated, unified, timely, and effective planning and execution by the various agencies that have maritime responsibilities…to respond to a full range of maritime security threats."[57] The MOTR process calls for an interagency council to delegate lead authority and recommend appropriate actions to pursue a desired effect.[58] This is essential because it ensures that different agencies work with a unified purpose in an attempt to close capacity and capability gaps and to eliminate jurisdictional overlaps, which can create competition and confusion.

There are two inherent problems with MOTR. First, any type of bureaucratic council or interagency coordination of this magnitude is a slow process that does not proactively address emerging threats. Second, these documents still rely on the current division of labor and framework of PCA and DODD 5525.5(c) in order to mitigate the maritime threat, unless otherwise directed by presidential authority.[59] The Maritime Operational Threat Response process still does not provide an effective solution because the current rules, policies, and laws reinforce the gaps and seams. Despite MOTR's shortcomings, it does begin to address the complexity and variable nature of the maritime domain that requires close coordination between maritime security stakeholders to be effective in MSO.

The *National Fleet Policy* attempts to integrate the Navy and Coast Guard unique platforms and capabilities to support operations close to home and abroad.[60] This is an important step in recognizing the different attributes each organization brings to

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57 *Naval Operations Concept 2010*, 38.

58 Department of Homeland Security, *Maritime Operational Threat Response Forces: Establishing Integrated Maritime Counterterrorism Operational Threat Response Capabilities in the Atlantic, Pacific, and Gulf of Mexico Operating Areas* (Washington, DC: Department of Homeland Security), 3. This is a supporting plan to the MOTR plan.

59 As JP 3-27 states, "these protocols are based on existing law, desired USG (U.S. Government) outcome, greatest potential magnitude of the threat, response capabilities required, asset availability, and authority to act."[59] Department of Defense (DoD), *Joint Publication 3-27:Homeland Defense* (Washington, D.C.: DoD, 2007), V–1.

60 Chief of Naval Operations (CNO) and Commandant of the Coast Guard, *National Fleet: A Joint Navy/Coast Guard Policy Statement* (March, 2006), http://www.navy.mil/navydata/cno/2006_national_fleet_policy.pdf.

maritime security. For example, the Coast Guard has broad law enforcement powers and civil maritime expertise, while the Navy has many ships and robust equipment. Combined, the "National Fleet" becomes a potent weapon of authorities, capabilities, and capacity in combating maritime security threats. While the policy is a step in the right direction, different mission focus and different resources reduce the integration and interoperability of the services. This will be discussed in later chapters.

Theater Security Cooperation is the chief mechanism to build and ensure maritime security abroad, and indirectly at home. Because no nation has the capability of achieving global maritime security on its own, only the combined efforts of maritime nations can achieve maritime security. As the 2010 Naval Operations Concept states, "The responsibility of individual nations to maintain maritime security within their waters is the foundation upon which global maritime security is built."[61] The purpose of TSC is to, "collaborate with allies and partners alike to develop the expertise, infrastructure, awareness, and capacity to respond to the full range of maritime security threats and irregular challenges."[62] The global reach of U.S. naval forces puts them in a good position to reach allied and partner nations in order to build partner capacity for maritime security.

c. Maritime Domain Awareness (MDA)

The *National Plan to Achieve Maritime Domain Awareness* defines MDA as: "the effective understanding of anything associated with the maritime domain that could impact the security, safety, economy, or environment of the United States."[63] To achieve this, MDA, "requires persistent monitoring of vessels, cargo, people, and

61 *Naval Operations Concept 2010*, 38.

62 *Naval Operations Concept 2010*, 41.

63 CNO, *2011 Navy Maritime Domain Awareness (MDA) Concept* (Washington DC: Dept. of the Navy), 1.

infrastructure within and adjacent to the maritime domain."[64] The Navy and Coast Guard play a key role as data providers and consumers of MDA.[65]

Maritime Domain Awareness is essential in maritime security, because MDA attempts to prevent crimes before they happen through transparency, and allows a more calculated and efficient employment of limited resources.[66] As many maritime security threats conceal their activities within normal civil maritime operations, it becomes even more important to use all sources of information to try to pick out the threats from normal traffic. To do this requires collaboration, coordination and information sharing among interagency and international partners. For example, the Navy has robust collection and sensor capabilities, while the Coast Guard and other agencies are well tuned into the happenings in civil maritime operations.

Despite MDA's importance to naval forces and maritime security, there is an abundance of literature on the subject; therefore, this study does not offer any further insight into the subject than already exists, and it will not be a main topic of discussion for this thesis.

C. NAVAL SERVICES' ROLES IN MARITIME SECURITY

The purpose of this section is to provide background on the Coast Guard and Navy's roles in maritime security. The look at each service will start with the force structure to determine what types of platforms and capabilities each service uses in MSO and to help conceptualize how the design of the force influences maritime security missions. Then, the section will look at the homeland and overseas maritime security roles for each service by identifying the key tasks they perform in support of maritime security.

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64 *2011 MDA Concept*, 1.

65 Ibid., 2.

66 Jeffery Randall, "Ready for the Future? The U.S. Coast Guard and 21st Century Law Enforcement on the High Seas," *Brookings: 21st Century Defense Initiative Policy Papers*, no.9 (September 2011), 11, http://www.brookings.edu/~/media/Files/rc/papers/2011/0901_coast_guard_randall/0901_coast_guard_randall.pdf.

1. U.S. Navy

The Navy is a warfighting entity. As such, it has dedicated its forces and missions in pursuit of winning wars, but the emergence of maritime security threats in the last two decades led the Navy, in 2007, to place maritime security as one of the Navy's six core missions.[67] Evidence of the maritime security mission's importance is quite evident in doctrine and daily operations.[68] *A Cooperative Strategy for 21st Century Seapower* imparts that naval force global distribution "must extend beyond traditional deployment areas and reflect missions ranging from humanitarian operations to an increased emphasis on…enforcing the rule of law in the maritime domain…by countering piracy, terrorism, weapons proliferation, drug trafficking, and other illicit activities."[69] Since most maritime security threats do not follow the traditional sense of a nation-state conventional military force enemies, it has coined the term "irregular challenges" to encompass all threats that are not conventional military enemies.[70] These documents also give equal weight to conventional and irregular challenges,[71] showing that conventional Navy mission areas are still relevant and highly important to naval strategic thinking. As such, the Navy now operates to conduct both traditional warfare and confront irregular challenges.

a. Force Structure

The U.S. Navy's force structure is balanced in favor of traditional warfare and confronting high-end military threats, due to its statutory warfighting mission.[72] This means that the majority of Navy general purpose force vessels are open ocean ships with high-end sensors, communications equipment, and weapons. Despite being heavily dedicated to traditional warfare, almost all of the Navy's general purpose force ships

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67 *A Cooperative Strategy for 21st Century Seapower*.

68 The U.S. Navy's two main maritime strategic doctrines are: *A Cooperative Strategy for 21st Century Seapower* (CS-21) and the *Naval Operations Concept 2010* (NOC 10). These publications drive naval strategic thinking as well as establish the nature of the future challenges to sea services.

69 Ibid.

70 CNO, *The U.S. Navy's Vision for Confronting Irregular Challenges*, (Washington, DC: USN, 2010), 2.

71 *Naval Operations Concept 2010*, 4; *A Cooperative Strategy for 21st Century Seapower.*

72 Till, *Seapower*, 120–122.

provide some ability for maritime security.[73] This means a majority of the Navy's vessels are capable of addressing both traditional and maritime security threats. Since most Navy ships are multi-mission, it also means that vessels will not always be available to support maritime security operations as other tasking competes for their presence.

The Navy's Naval Expeditionary Combat Command (NECC) is an important element in the Navy's maritime security role because "NECC provides rapid deployable and agile expeditionary forces… to warfare commanders in support of maritime security operations around the globe."[74] This is a relatively small specialized force that has maritime security and TSC as two of its prime mission sets. Its skills and missions allow the Navy to provide some maritime security in primarily green (littoral) and brown water (river) environments,[75] as opposed to the Navy's general purpose forces that operate from the open ocean.

b. Homeland Maritime Security Roles

The Navy's primary focus in the homeland is defense and serves as the primary agency for maritime homeland defense. Some maritime homeland defense missions involve planning and directing of "naval operations (e.g., undersea operations, mine operations, strike operations, fires, interdiction, amphibious and expeditionary operations, and MIO), as well as providing communications systems support and FP [force protection]," in protection of the homeland.[76] These are some of the more explicit military oriented homeland defense missions.

The Navy is the primary supporting agency to the Department of Homeland Security (DHS)/Coast Guard for homeland maritime security. Participation in MDA, counter-terrorism, supporting counter-drug operations, Navy critical infrastructure

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[73] For a list of Navy's ships maritime security capabilities see, A. Fritz, A. Freedman, and P. Haussman, *The Navy Role in Confronting Irregular Challenges: Implementing the Navy Vision for CIC* (Alexandria, VA: CNA, 2011), 44–48.

[74] Navy Expeditionary Combat Command (NECC), "Welcome to Navy Expeditionary Combat Command," (n.d), http://www.necc.navy.mil/.

[75] NECC, "About Us," (n.d.), http://www.necc.navy.mil/.

[76] CJCS, *Joint Publication -–27*, V-1.

protection, cyberspace, and support to civil authorities all constitute the Navy's homeland maritime security missions. For instance, the Navy participates in MDA through the National Maritime Intelligence Center (NMIC). The Navy also provides forces to U.S. Northern Command in support of Operation Noble Eagle (the title for homeland security operations). [77] One of the Navy's best known maritime security missions was the use of its patrol craft to help provide port security for U.S. ports after 9/11. The patrol craft operated under the control of Coast Guard Atlantic Area with the help of an embarked Coast Guard law enforcement detachment (LEDET).[78]

The Navy's restriction from participating in direct law enforcement is the principal reason it plays a limited role in homeland maritime security. The preference of the Navy is to provide defense and security to the homeland through a layered defense in the forward regions and approaches to the homeland,[79] so a majority of Navy maritime security operations in the maritime domain occur overseas. A potential reason for the Navy to prefer overseas operations is to avoid the stigma and conflict in conducting domestic operations. The Navy, however, still faces many of the same legal restrictions and force structure challenges overseas as it does in the homeland that reduces its effectiveness to conduct maritime security.

c. Overseas Maritime Security Roles

The Navy participates in maritime security operations on a daily basis overseas. One Navy's main direct approach operations include its participation in Combined Maritime Forces (CMF) across approximately 2.5 million square miles of international waters in the Middle East. CMF is a multi-national naval partnership, whose "main focus areas are defeating terrorism, preventing piracy, encouraging regional

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[77] U.S. Northern Command, " About USNORTHCOM," (n.d), http://www.northcom.mil/about/index.html#FFC.

[78] Scott Vanier, "Firebolt Returns from Operation Noble Eagle," *Navy News*, April 17, 2002, http://www.navy.mil/search/display.asp?story_id=1330.

[79] USNORTHCOM, *Department of Defense Homeland Defense and Civil Support Joint Operating Concept*, 21–22.

cooperation, and promoting a safe maritime environment."[80] It is headquartered and commanded by Commander Naval Forces Central Command and U.S. Fifth Fleet, making it a U.S. Navy led maritime security operation. CMF is comprised of three principal task forces: CTF-150 (maritime security and counter-terrorism), CTF-151 (counter piracy) and CTF-152 (Arabian Gulf security and cooperation).

The Navy's TSC programs range from Maritime Security Force Assistance (MSFA) operations, such as patrols for Iraqi offshore oil platform protection, to building partner capacity missions. Some of these include the Iraqi Training and Advisory Mission, Southern and African Partnership Stations, and the African Maritime Law Enforcement Partnership (AMLEP), in which "Navy warships, Coast Guard cutters, and partner vessels with embarked Coast Guard LEDETs and mobile training teams (MTTs) conduct operations and professional exchanges to advance maritime security and law enforcement competencies."[81] The Navy also conducts multiple exercises that incorporate maritime security, ultimately improving the ability of U.S. naval forces to respond effectively to regional security threats in concert with its allies and partners. Some of the exercises include: "Rim of the Pacific (RIMPAC), the largest combined exercise in the Pacific; Cooperation Afloat Readiness and Training (CARAT); Southeast Asia Cooperation Against Terrorism (SEACAT); Annual Exercise (ANNUALEX) with Japan; FOAL EAGLE in Korea; Baltic Operations Exercise (BALTOPS); and UNITAS, PANAMAX, and TRADEWINDS in the Western Hemisphere."[82]

Closer to home, the Navy continues to provide vessels and aircraft for counter-illicit trafficking patrols since the 1980s. Joint Interagency Task Forces (JIATFs) South and West, whose primary goal is the "interdiction of illicit trafficking and other narco-terrorist threats in support of national and partner nation security."[83] To highlight this, in the spring of 2010, two Navy vessels conducted counter-illicit trafficking patrols

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[80] Combined Maritime Forces, "About CMF" (n.d.), http://combinedmaritimeforces.com/about/.

[81] *Naval Operations Concept 2010*, 39–40.

[82] Ibid., 41.

[83] Joint Interagency Task Force South, "Joint Interagency Task Force South," (n.d.), http://www.jiatfs.southcom.mil/index.aspx.

in the Caribbean Sea and off the coasts of Central and South America. They made four drug interdictions, seizing over 5 tons of cocaine, and capturing 13 suspected drug smugglers and two "go-fast" small boats.[84] It is important to note that the Navy still required Coast Guard LEDETs to embark in order to accomplish these missions because it cannot directly conduct law enforcement missions.

2. U.S. Coast Guard

The Coast Guard is unique in that it is a military service and a federal law enforcement agency. Due to this, it can operate under a full spectrum of authorities from national defense to law enforcement. Despite being a military service, the Coast Guard has a "distinctively law-enforcement and regulatory, civilian-lifeguard, and resource-protecting character,"[85] rather than a military character. As the quote indicates, the Coast Guard is also a multi-mission agency. It has two primary mission areas, homeland security missions and nonhomeland security missions.[86] Maritime security only became a top priority for the USCG since the 9/11 attacks in 2001.[87] Much like the Navy, it has to find a balance to conduct both sets of missions.

a. Force Structure

The Coast Guard operates over 2,100 boats and cutters[88] to govern and defend the 3.4 million square miles of U.S. Exclusive Economic Zone and territorial

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84 Ed Early, "Multiple Drug Seizures Highlight Freedom's 4th Fleet Deployment," *Navy News*, April 5, 2010, http://www.navy.mil/search/display.asp?story_id=52416.

85 Gray, "The Coast Guard and the Navy," 117.

86 The Coast Guard's homeland security missions include ports, waterways, and coastal security (PWCS), drug interdiction, migrant interdiction, defense readiness, and other law enforcement. Its non-homeland security missions include marine safety, search and rescue, aids-to-navigation, living marine resources, marine environmental protection, and ice operations. Department of Homeland Security (DHS), Office of Inspector General, *Annual Review of the United States Coast Guard's Mission Performance (FY 2010)* (Washington, DC: DHS, 2011), 2.

87 Gary R. Bowen, "Coast Guard Law Enforcement Detachments in the War on Terror" (monograph, Army Command and General Staff College, 2005), 1.

88 The majority of the vessel are the small boats, followed by smaller patrol cutters. Acquisition Directorate, "U.S. Coast Guard Cutters, Boats & Aircraft," U.S. Coast Guard, January 31, 2012, http://www.uscg.mil/ACQUISITION/aboutus/cuttersaircraft.asp.

waters, 95,000 miles of coastline, and about 360 ports.[89] The Coast Guard's force structure is opposite of the Navy's. It is primarily a coastal force that is designed for patrols/maritime interdiction and rescue operations. Since the Coast Guard vessels are not combat ships, they do not need high-end capability to defeat low-end threats, therefore, most of its vessels have only basic defenses. The vast majority of these vessels are smaller, shallow drafted, and operate along the coast. Less than one hundred cutters can operate in the open ocean for any significant amount of time.

To note, the Coast Guard is struggling to update and reman its long neglected service. The Deepwater program provides an important example of the Coast Guard's efforts to update its aging and obsolete force by replacing or adding 91 new cutters, 124 new small boats, and 247 new or modernized airplanes, helicopters, and unmanned aerial vehicles (UAVs).[90] Although the Deepwater program was initiated in the late 1990s, it was not given the credence it deserved until after 9/11.The Deepwater program has been plagued by severe budget overruns, acquisition management problems, and slow deliveries, delaying the update of the Coast Guard's fleet.[91] Clearly, these setbacks do not improve the ability of the Coast Guard to meet its maritime obligations.

The Coast Guard has one asset of significant importance to maritime security, the LEDET. They represent the best asset for direct LE support for Navy and other partner nations's operations, because they "consist of active duty personnel who operate onboard U.S. and partner nation naval vessels in order to provide expanded law enforcement authority, expertise and capability to carry out interdiction and apprehension operations from U.S. and partner nation surface assets."[92] They can also operate in both the homeland and abroad. The Coast Guard Fiscal Year (FY) 2011 called for the expansion of LEDETs to 18 total teams with 12 personnel, an increase from 17 teams

89 Mones and Webb, "The Coast Guard Needs Help from the… Navy and Marine Corps."

90 Ronald O'Rourke, *Coast Guard Deepwater Acquisition Programs: Background, Oversight Issues, and Options for Congress* CRS RL33753 (Washington, D.C.: The Service, 2011), Summary.

91 Ibid., 10–27.

92 *Naval Operations Concept 2010*, 31.

with 11 personnel each, due to the high demand for operations.[93] Even with the existence of LEDETs, their small numbers make it difficult to for them to meet their demand.[94]

b. Homeland Maritime Security Roles

As the Navy's focus is abroad, the Coast Guard's focus is at home. The Coast Guard's unique role as both a military service and law enforcement agency logically places it as the primary agency for providing maritime homeland security.[95] It can perform a full spectrum of homeland security and maritime homeland defense missions with little jurisdictional complications, making it the ideal service to combat a majority of threats. The Coast Guard's unique position puts it into place where it can help bridge the gap between military and civilian law enforcement needs because it continuously uses the interagency process in its daily operations. Despite its unique and adept position, it is limited by its small size and restrictive resources compared to the U.S. Navy.

Seven of its eleven statutory missions are related to maritime security including: Ports, Waterways and Coastal Security, Drug Interdiction, Migrant Interdiction, Other Law Enforcement, Living Marine Resources, Marine Safety, Marine Environmental Protection, and Defense Readiness.[96] To highlight some of its maritime security efforts and capabilities, in Fiscal Year 2010, the Coast Guard conducted:

- 16,926 security boardings of small vessels in and around U.S. ports, waterways, and coastal regions
- 19,407 waterborne patrols of fixed security zones
- 4,015 escorts and boarding of high-capacity passenger vessels and vessels carrying certain dangerous cargoes

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93 Department of Homeland Security, "Testimony of Admiral Thad W. Allen Before the Senate Appropriations Committee on the Coast Guard Fiscal Year 2011 Budget Request," April 13, 2010, http://www.dhs.gov/ynews/testimony/testimony_1271366302572.shtm.

94 *Naval Operations Concept 2010*, 101.

95 O'Rourke, Homeland Security: Navy Operations - Background and Issues for Congress, 2.

96 Commandant of the United States Coast Guard, *United States Coast Guard 2011 Posture Statement: with 2012 Budget in Brief* (Washington, D.C.: GPO, 2011), 14.

- 1,399 escorts of high-value Navy vessels transiting U.S. waterways
- removed a total of 202,439 pounds of cocaine, and 36,739 pounds of marijuana; seized 56 vessels, and detained 229 suspected smugglers
- deployed LEDETs aboard U.S. Naval and partner nation warships removed over 61,000 pounds of cocaine, 2,000 lbs of marijuana, detained 74 suspected smugglers, and seized 13 vessels
- interdicted 2,088 undocumented migrants attempting to illegally enter the United States
- continued the deployment of six patrol boats and their supporting and command elements to U.S. Central Command [97]

In addition to its security and law enforcement missions, the U.S. Coast Guard has other import statutory missions, like search and rescue and Marine Transportation System (MTS) management further extending its resources.[98] The Coast Guard's daily operations offer testament to the sizeable efforts of the smallest military service. Undoubtedly, their small resources require focusing on the homeland, creating the need for their maritime security capabilities and authorities elsewhere in the maritime domain.

c. Overseas Maritime Security Roles

Because of the Coast Guard's experience and authorities, they provide considerable resources to the U.S. Navy in order to help close the gap caused by the Navy's lack of law enforcement capability. Besides deploying on ships, LEDETs also provide security training for partner nations as part of their mission set.[99] In addition to LEDET support, the Coast Guard also deploys ships and other support elements, like Port Security Units, to combatant commanders and the U.S. Navy to help bolster maritime security needs.[100]

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97 Commandant of the United States Coast Guard, *United States Coast Guard 2011 Posture Statement*, 16–17, 19–20.

98 Ibid., 14.

99 Ibid., 20.

100 *Naval Operations Concept 2010*, 31.

The U.S. Coast Guard also uses some of their valuable resources for maritime capacity-building assistance to other nations. For example, in 2010, the Coast Guard conducted the African Maritime Law Enforcement Partnership program, conducting extensive joint maritime training operations with West African naval forces.[101] They conducted numerous training events around the globe, in all helping 51 nations, training a total of 2,503 host country participants.[102] This is an important program because capacity building is an integral part of the U.S. maritime strategy. Since the Coast Guard resembles most other naval forces around the globe, their expertise and translatability to other partner nations is significant.

D. OTHER AGENCIES

This section will briefly mention two other agencies (Naval Criminal Investigative Service and Customs and Border Patrol) to highlight that although the Navy and the Coast Guard are United States' two largest actors in maritime security, other agencies do play important roles in maritime security, coordinated effort is needed among many different organizations to leverage the unique skills that each agency has.

1. Naval Criminal Investigative Service (NCIS)

Naval Criminal Investigative Service also offers expandable law enforcement authorities, capabilities, and expertise for the Navy. It is a small organization with 1,200 Special Agents to support the Navy at home and around the world.[103] Besides providing intelligence and interagency support for the Navy, NCIS agents also support direct approach MSO. The effectiveness of NCIS agents for support in counter-piracy missions

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101 Commandant of the United States Coast Guard, *United States Coast Guard 2011 Posture Statement*, 19–20.

102 Ibid.

103 Naval Criminal Investigative Service (NCIS), "Frequently Asked Questions," (n.d.), http://www.ncis.navy.mil/FAQ/Pages/default.aspx.

is well documented.[104] NCIS agents do not provide the manpower, tactical boarding capability, and operational maritime expertise the LEDETs offer, but they are extremely adept at investigation processing, intelligence exploitation, and prosecution package building once a boarded vessel is considered secure.[105] Use of NCIS agents generate operational trade-offs, but they carry the necessary legal authorities to cover the Navy's authority gap in MSO.

2. Customs and Border Patrol (CBP)

It is important to note two other important players in homeland maritime security operations. They are Customs and Border Protection (CBP) and the smaller Immigration Customs Enforcement (ICE). CBP's Office of Air and Marine provides 291 aircraft and 260 marine vessel capabilities to homeland maritime security operations.[106] Their missions are in support of the Maritime Security Strategy and Coast Guard in anti-terrorism and border security. CBP runs a highly important operations center, called the Air & Marine Operations Center (AMOC) out of Riverside, California, that monitors all air and maritime traffic in the vicinity of the United States. CBP owned, but multiagency run, it provides the input of over 250 radar sources and patrol craft, making it the only center in the U.S. that has the largest air and maritime picture to provide real time security.[107] Interestingly, the DoD does provide Air National Guard personnel to the AMOC, but not U.S. Navy personnel. This kind of operations center can provide a tremendous boost to the maritime domain awareness picture, but it does lack DoD interest in the maritime role. A recent example of the coordination through AMOC, in

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104 Caldwell and Pendlton, *Maritime Security*, (2011), 5 ; Mark D. Clookie, "NCIS Uses New Techniques to Fight an Old Crime," *The Police Chief* 78, no. 9 (September 2011), 14, http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=2471&issue_id=92011.

105 Monique K. Hilley **"**NCIS Lends Expertise to Counterpiracy Operations," *NAVY.com*, February 24, 2009, http://www.navy.mil/search/display.asp?story_id=42756.

106 U.S. Customs and Border Protection (CBP), "Snapshot: A Summary of CBP Facts and Figures," (Washington D.C.: CBP, 2011), 1. http://www.cbp.gov/linkhandler/cgov/about/accomplish/snapshot.ctt/snapshot.pdf.

107 CBP, "Inside CBP: Air and Marine Operations Center," *Youtube.com* (June 11, 2010), http://www.youtube.com/watch?v=xlw1nuVgJbM&feature=related.

June 2010, a CBP P-3 aircraft detected and directed USCG vessels that stopped $82 million worth of drugs trafficked in the Caribbean.[108] Both agencies fall under DHS and maintain a close working relationship through civilian law enforcement agencies. The cooperation and integration with the U.S. Navy is limited, providing potential seams in the execution of maritime security missions.

E. CONCLUSION

Maritime security is a large task involving many entities from international, public and private sectors. The end objectives of maritime security is preserving the freedom of the seas, facilitate and defending commerce, and maintaining good order (governance) at sea. The U.S. Naval Services, by their nature, are predisposed to provide maritime security by focusing on managing maritime security threats directly or indirectly. They do this by providing security patrols, intercepting suspect vessels, providing data for MDA, and building partner capacity through TSC.

The Navy and Coast Guard are opposite, but complementary services. The Navy has many advanced open oceans ships with many high-end capabilities, but little legal authorities and law enforcement and civil maritime expertise. The Coast Guard is a much smaller organization consisting of primarily coastal vessels with basic defense capabilities, but they have broad legal authorities and a well-developed law enforcement and civil maritime expertise. Despite their differences, they both seek the same goal of providing security for American maritime interests. Combined, the Navy and Coast Guard are capable of challenging the full spectrum of maritime threats to the United States. However, both services have other primary missions that split their focus away from maritime security, threatening to reduce their individual and combined efforts to achieve maritime security.

The Navy is actively involved and focused in maritime security abroad, while the Coast Guard leads maritime security in the homeland. Despite their complementary

[108] CBP, "CBP P-3 Operations Centers Stop $82M in Drugs in 10 Days," June 23, 2010, http://www.cbp.gov/xp/cgov/newsroom/news_releases/archives/2010_news_releases/june_2010/06232010_8.xml.

attributes, their opposite nature also creates problems in achieving maritime security. The lack of legal authorities and civil maritime expertise prevent the Navy from fully addressing most criminally natured maritime security threats. The Coast Guard's small size prevents them from meeting all their security obligations, as well as providing support to the Navy in order to supply the legal authorities needed. The Navy's overseas focus and limited authorities prevent them from providing some of its resources to the Coast Guard to meet its homeland security requirements. These are some of the issues that will be discussed in Chapter IV. First, it is important to understand what authority the Navy does have to address maritime security threats in both the homeland and overseas. The next chapter will provide background on the different authorities and restrictions under which the Navy operates.

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III. LEGAL FRAMEWORK

A. INTRODUCTION

The purpose of this chapter is to establish the legal authorities framework the Navy operates within. As the legal regime is extremely large, this chapter will highlight the most important laws and policies as they relate to the Navy's maritime security operations (MSO). The first part of the chapter will establish the current authorities and policies that determine the Navy's law enforcement (LE) powers. The second section will examine how the Navy's authorities relate to different maritime security threats.

B. CURRENT AUTHORITIES AND POLICIES FOR LE

1. The *Posse Comitatus* Act (PCA) and DoD Policy

Posse Comitatus, and its subsequent policies, is the key guiding principle the Navy uses in law enforcement roles. Its restrictions on law enforcement have underpinned military norms and directed military thinking for generations of its leaders. This section provides a brief background on PCA. It will describe how PCA restricts the Navy's role in law enforcement. Lastly, it will discuss the exceptions to PCA.

a. Background

The *Posse Comitatus* Act (18 U.S.C. § 1385) was passed in 1878 following a reaction against the use of federal troops to maintain law and order during the post-Civil War Reconstruction.[109] It banned Army personnel from conducting civil law enforcement. The bill remains virtually unchanged with the exception of adding the Air Force to the law in 1956.[110] PCA states:

> Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the

[109] Charles Doyle, *The Posse Comitatus Act and Related Matters: The Use of the Military to Execute Civilian Law* (Washington: The Service 95-964 S, June 1, 2000), 9.

[110] Ibid., 11.

> Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.[111]

A statutory limit to the Navy's law enforcement activities, akin to PCA, is found under Title 10 of the U.S. Code, Sec. 375, which directs the Secretary of Defense (SECDEF) to create a regulation (DoD Directive (DODD) 5525.5(c)) [112] bringing all branches of the military into alignment with PCA. However, the same part of the statute sets out several circumstances in which the military may support law enforcement agencies, notably in drug-interdiction.[113]

b. Stipulations

The Posse Comitatus Law (18 USC §1385) does not specifically mention the Navy, but common belief and practice holds that it pertains to all regular armed forces. [114] The important part to understand is that the Navy is not restricted constitutionally or statutorily from direct law enforcement. It is restricted only by policy. DODD 5525.5(c) restricts DoD personnel from conducting civilian law enforcement activities as a matter of administrative interpretation of Title 10, Sec 375. It is important to point out that DoD regulation does not indicate any specific terms punishment for breaking policy outside of current national law (PCA). At a minimum, PCA and DoD policy creates greater ambiguity to the real limitations to the naval services, either by law or policy.

Although PCA's jurisdiction only applies to America's territorial limits and U.S. persons, DODD 5525.5(c) further restricts all U.S. forces no matter where they

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111 18 U.S.C. § 1385, http://uscode.house.gov/download/pls/18C67.txt

112 Department of Defense (DoD), Directive 5525.5(c): *DOD Cooperation with Civilian Law Enforcement Officials* (December 20, 1989). See Enclosure 4 of DODD 5525.5.

113 Bonnie Baker, "The Origins of Posse Comitatus," *Air & Space Power Journal: Chronicles Online Journal*, November 1, 1999), http://www.airpower.maxwell.af.mil/airchronicles/cc/baker1.html; Felicetti and Luce, "The Posse Comitatus Act: Liberation from the Lawyers," 103.

114 Charles Doyle, *The Posse Comitatus Act and Related Matters*, 39.

are.[115] Under this framework, PCA/DoD policy makes it difficult for the U.S. Navy to conduct law enforcement related maritime security at home and abroad. In addition to PCA, the domestic law does not empower the Navy to conduct law enforcement. This is in contrast to the Coast Guard, which receives many Title 14 law enforcement authorities. The most important of which are 14 USC §2 and 14 USC §89, which specifically permits Coast Guard and its authorized personnel to enforce federal laws.[116] This is important because the Navy would need the same statutory authority to enforce federal laws for homeland maritime security, and in certain instances abroad. Most international treaties are nonbinding, relying on domestic national laws to enforce a treaty's regulations.[117]

Regardless of the legal contradictions, The U.S. Navy cites *Posse Comitatus* and its related DoD instructions, as well as its traditional norms, when it demurs from law enforcement activities. The DoD's (and the Navy's) firm adherence to PCA and the restrictions imposed by DODD 5525.5(c) cannot be understated.

c. Exceptions

Paradoxically, even with PCA and strong adherence to DoD policy, the U.S. Navy still has some latitude in countering threats on the maritime domain. DODD 5525.5(c) and Secretary of the Navy (SECNAV) Instruction (SECNAVINST) 5820.7C provide exceptions to U.S. Navy direct assistance to law enforcement. There are three

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115 The PCA only applies within the territorial limits of the United States. A 1989 Department of Justice (DOJ) Office of Legal Counsel opinion concluded that the PCA does not have extraterritorial application. Courts also have adopted the view PCA imposes no law enforcement restriction for U.S. armed forces abroad, noting that Congress only intended to preclude military intervention in domestic affairs. David G. Bolgiano, "Military Support of Domestic Law Enforcement Operations: Working Within Posse Comitatus," *FBI Law Enforcement Bulletin* 70, no. 12 (December, 2001), 19.

116 "The statutory basis for all law enforcement missions is contained in 14 USC 2; "The Coast Guard shall enforce or assist in the enforcement of all applicable federal laws on, under, and over the high seas and waters subject to the jurisdiction of the United States." 14 USC 89 provides active duty Coast Guard petty officers, warrant officers and commissioned officers authority to board, search, detain, arrest, and/or seize in appropriate circumstances." U.S. Coast Guard, *Ocean Guardian: Fisheries Strategic Plan* (Washington, DC: USCG, 2004), Appendix C, http://www.uscg.mil/hq/cg5/cg531/LMR/OceanG/OG_AppC.pdf.

117 The UN Convention on Illicit Traffic of Narcotics and Psychotropic Drugs (1988) and The United Nations Convention against Transnational Organized Crime (2000), including their protocols, are examples of treaties that depend on nations' domestic laws to enforce the treaties statutes, http://www.unodc.org/unodc/en/treaties/index.html?ref=menuside.

particular of note, crimes involving nuclear materials, fisheries enforcement, and exceptions to policy granted on case-by-case basis.[118] How the exceptions affect the Navy's ability to confront those two maritime threats is discussed later in the chapter.

The most important exception to policy is the policy waivers that can be granted by the SECDEF or the SECNAV, with SECDEF approval. Within the territorial limits of the U.S. and for incidents involving U.S. persons, the waivers are limited to requests by the Attorney General for assistance, or a serious threat posed to the U.S. interests where law enforcement assets are not available or capable of addressing the threat.[119] Outside the territorial United States, the waivers are at the discretion of the SECDEF or SECNAV. Reasonably, the exception of policy for direct participation of the U.S. Navy in law enforcement can be granted to any maritime threat, as long as the threat is deemed as a serious threat to U.S. interests. The flexibility for the Navy's use is, therefore, truly only limited to the will of executive authority (the President and SECDEF). Despite the existence of the liberating exception of policy clause, the area of military use in seemingly civil affairs oriented issues has seldom been challenged, consequently making the clause's potential useless.

2. International Law

Since the maritime domain is largely international in nature, the rules and regulations that govern how nations interact with each other is important to MSO. Because the Navy has little enforcement power, derived from domestic laws and policies, international law becomes the largest source of MSO enforcement authority. This section covers four important international maritime law regimes from which the Navy derives most of its authorities.

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118 Secretary of the Navy (SECNAV), Secretary of the Navy Instruction (SECNAVINST) 5820.7C: *Cooperation with Civilian Law Enforcement Officials* (January 26, 2006), 5–9.

119 SECNAV, SECNAVINST 5820.7C, 6.

a. The 1982 United Nations Convention on the Law of the Sea (UNCLOS)

UNCLOS codified customary international law into a international maritime legal regime. It underpins the rights of nations at sea, as well as governing the rights and obligations between nations at sea. The Primer for the Maritime Security Multilateral Planners Conference (MPC) VI held in Denmark 13–15 May 2008 summarizes UNCLOS meaning to maritime security well:

> The United Nations Convention on the Law of the Sea (UNCLOS) serves as a cornerstone for peacetime maritime security, providing a stable and widely accepted legal order of the oceans. The Convention recognizes rules for the status of ships and their nationality, immunities of warships, prohibitions on universal crimes such as the transport of slaves and maritime piracy, control of the illicit traffic in narcotic drugs, provides for a right of visit in certain circumstances, and establishes a framework for the peaceful resolution of disputes arising from maritime matters.[120]

The U.S. has not ratified UNCLOS, so the U.S. is not legally bound by its rules. However, it does abide by UNCLOS as a matter of custom and policy.[121] This means that the United States can act within its own national interest contrary to international law, if it chooses (e.g., executive authority).

The United Nations Convention on the Law of the Sea contains several provisions relating specifically to maritime security. Those provisions establish piracy and trafficking in human slaves as universal crimes, meaning any nation may take action against them.[122] Article 108 provides for the control of the illicit drug-trafficking.[123] The last important article, Article 110, permits warships to exercise the right of "approach and

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120 James Kraska, "Maritime Security Primer: Global Maritime Security Cooperation in an Age of Terrorism and Transnational Threats at Sea," Multilateral Planners Conference (MPC) VI, Denmark 13–15 May 2008, 9.

121 Horace B. Robertson, "The 1982 United Nations Convention on the Law of the Sea: An Historical Perspective on Prospects for US Accession in *International Law and Military Operations*," in *International Law and Military Operations*, ed. Carsten, 117-118; John Astley and Michael Schmitt, "The Law of the Sea and Naval Operations," *Air Force Law Review* 42, (1997), 119–155, http://search.proquest.com/docview/195189551?accountid=12702.

122 Articles 99 and 100-107 address trafficking in human slaves and piracy.

123 Article 108 addresses illicit drug-trafficking.

visit" of merchant vessels on the high seas by warships of all nations in order to stop a universal crime or verify the vessel's flag state. This article is important because the Navy can gain access to any merchant vessel, even without the consent of the flag state. This does not allow the Navy to enforce laws, except universal crimes, however, it can help in disrupting a threat until the proper legal authorizations can be obtained to exercise jurisdiction over the crime.

b. International Maritime Organization (IMO)

The IMO, "as a specialized agency of the UN recognized in the law of the sea as the "competent international organization" for the setting of worldwide shipping standards and approval of coastal-state regulations affecting international shipping, is the key institution for the development of international maritime law."[124] The IMO "member states have adopted nearly fifty treaties and hundreds of codes, guidelines, and recommendations that address nearly all aspects of shipping and are now applicable to almost 100 percent of global tonnage."[125] The organization is valuable in promoting safe, clean, and efficient shipping.

The primary U.S. representative to the IMO is the U.S. Coast Guard. [126] Not only does the Coast Guard support U.S. positions on maritime issues, it makes use of the IMO to gain a holistic "view of maritime governance, in terms of regimes, awareness and operations."[127] Since almost the entire world's shipping follows the IMO and its guidelines, and the fact that maritime security threats typically utilize civil shipping, understanding its processes and regulations should be of the utmost importance to the Navy. Leveraging the Coast Guard's influence in the IMO is important to aid the Navy's effort in maritime security.

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[124] Kraska, "Grasping "The Influence of Law on Sea Power," 123.

[125] Ibid.

[126] U.S. Coast Guard, "USCG IMO Homepage," January 13, 2012, http://www.uscg.mil/imo/.

[127] Kraska, "Grasping "The Influence of Law on Sea Power," 132.

c. United Nations Security Council Resolutions (UNSCRs)

United Nations Security Council Resolutions are the strongest of international authorities granting the Navy to conduct maritime security/law enforcement missions. Since they are legally binding, they essentially become law. There have been multiple UNSCRs since 1990 that allow the Navy to act in a near law enforcement capacity to address threats to the maritime domain.[128]

United Nations Security Council Resolutions can authorize the U.S. to use the Navy to "intercept vessels and possibly board, inspect, search, and seize them or their cargoes as necessary to restore international peace and security."[129] This led to the Navy's maritime interception operations (MIO), an important Navy mission area for maritime security. MIO, although useful for maritime security operations, its "specific political, geographic, and tactical factors, and the legal authority on which the MIO is based, influence the enforcement procedures,"[130] limiting its jurisdictional reach. Because UNSCR authorities tended to be limited and specific, it restrained practical application to other maritime challenges, such as drug trafficking, human trafficking, fisheries, and others.

d. The 1988 Convention for Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) and the Protocol of 2005 to the SUA (2005 SUA Protocol)

These two conventions are important, because they increased the international authorities for the Navy to act against terrorism, piracy, and WMD. An article from the *American University International Law Review* summarizes SUA's objective:

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128 Prior to 2001, the UNSCRs authorized States to halt shipping into and out of Iraq, Haiti, and the Federal Republic of Yugoslavia. After 2001, major resolutions included: Resolutions 1368 (2001) and 1373, along with UN Charter Article 51, is used in part as justification (although not specifically) for MIO operations for counter narco-terrorism MIO in the Middle East; Resolution 1540 (2004) called on nations to take cooperative action to prevent the WMD proliferation; and Resolutions 1816, 1838, 1846 and 1851 (all 2008) reaffirmed and expanded the powers of naval services to combat the piracy threat. Hodgkinson, et al., "Challenges to Maritime Interception Operations in the War on Terror," 621, 644; DON, NWP 1-14M, 4-7; Kraska, "Grasping "The Influence of Law on Sea Power," 127, 129.

129 DON, NWP 1-14M, 4–7.

130 CJCS, *Joint Publication 3-27*, V-10.

> The SUA is of paramount significance to modern MIOs…the main purpose of SUA is to ensure that appropriate action is taken against persons committing unlawful acts against ships. These acts include the seizure of ships by force, and acts of violence against persons on board ships, and the placing of devices on board a ship, which are likely to destroy or damage it, if the act endangers or is likely to endanger the safe navigation of the ship. Under the terms of SUA, Member States must either extradite or prosecute alleged offenders.[131]

The 2005 SUA Protocol increased the potency of the original SUA by adding extra offenses, such as WMD (biological, chemical, nuclear, and using a ship or its cargo as a WMD). But most importantly, it is the first international law that authorizes MIOs without the need for a UN Security Council Resolution. The Navy can board a vessel with flag state consent, if the Navy has reasonable grounds to suspect that the vessel or a person on board the ship is committing, has committed, or is about to commit an offense under SUA. However, if the vessel's flag state does not respond to a boarding request within four hours, the Navy may board the vessel.[132] The 2005 SUA Protocol authorizes law enforcement or other officials from warships or military aircraft to carry out such boardings.

3. Executive Authority

Executive authority refers to the President's and the Secretary of Defense's capability to award additional enforcement powers to the Navy. In doing so, the Navy can carry out ad hoc missions outside of their statutory responsibilities. In other words, executive authorities override both DoD policy and international law for the purpose of national interests. There are four important maritime security missions that fall under executive authority: the Proliferation Security Initiative, bilateral/multilateral agreements, expanded MIO, and self-defense.

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131 Hodgkinson, et al., "Challenges to Maritime Interception Operations in the War on Terror," 637.

132 Ibid.

a. Proliferation Security Initiative (PSI)

The U.S. created (meaning outside of the UN) the Proliferation Security Initiative legally authorizing the U.S. Navy to conduct maritime enforcement via Maritime Interception Operations (MIO),[133] a key component of counter-proliferation strategy.[134] Proliferation Security Initiative "is a global effort that aims to stop trafficking of WMD, their delivery systems, and related materials to and from states and nonstate actors of proliferation concern."[135] Essentially, PSI is a refinement and a modern day advancement of the Nuclear Nonproliferation Treaty of 1968 and UNSCR 1540, allowing greater flexibility to countering WMD proliferation. PSI ship boarding agreements provide the legal authority to board signatory vessels, if suspected of carrying WMD and related materials.[136] The agreements include the majority of the flag of convenience registry countries, such as Panama, Liberia, Marshall Islands, and the Bahamas that account for over fifty percent of worldwide shipping.[137] For other PSI signatory countries, only slightly more coordination is required to conduct maritime counter-proliferation operations. Overall, there are currently over 90 signatory countries.[138] PSI is potentially useful for the Navy because it creates a potentially large extension of its jurisdiction to counter WMD threats.

b. Bilateral/Multilateral Agreements

Bilateral and multilateral agreements are important because they utilize a variety of strategies between the United States and contracting nations to allow the

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133 CJCS, *Joint Publication 3-27: Homeland Defense*, VII-10; DON, Navy Tactics, Techniques & Procedures (NTTP) 3-07.11M: *Maritime Interception Operations (MIO) Manual* (April 2008), 2–2.

134 Craig Allen, *Maritime Counterproliferation Operations and the Rule of Law* (Westport, CT: Praeger Security International, 2007), 84.

135 Department of State (DoS), "Proliferation Security Imitative," (n.d.), http://www.state.gov/t/isn/c10390.htm.

136 DON, NTTP 3-07.11M, 2–2.

137 DoS, "Ship Boarding Agreements" (n.d.), http://www.state.gov/t/isn/c27733.htm; Regina Asariotis, et al., *Review of Maritime Transport 2010* (New York, NY: United Nations Conference on Trade and Development (UNCTAD), 2011), 42. http://www.unctad.org/en/docs/rmt2010_en.pdf.

138 DoS, "Proliferation Security Initiative."

United States to either enforce the laws of another country or extend U.S. jurisdiction over maritime security threats in order to suppress maritime security threats.[139] Since the majority of the maritime global commons is not under U.S. jurisdiction, these agreements are important to expand the legal reach of the United States to address maritime threats. PSI is a good example of a type of multilateral agreement between nations that can dictate the extent of use of U.S. Navy assets in maritime law enforcement. As international maritime laws, in general, cease at the territorial seas of other countries, the agreements between countries can be crucial in the extension of maritime security into areas under a state's jurisdiction. In the case of Somalia, Somali pirates used Somali territorial waters as a safe haven form international anti-piracy forces until the Somali government authorized the international piracy suppression laws jurisdiction to include their territorial waters.[140] The U.S. Navy can now legally conduct unhindered anti-piracy operations in Somali waters. The United States has many similar agreements related to counter-drug operations, but their applicability is characteristically limited to U.S. law enforcement agencies. Furthermore, most maritime drug-interdiction operations outside U.S. territory are performed by U.S. Navy assets under the operational and tactical control of the U.S. Coast Guard, almost making it an important Navy mission that could use the help of the agreements. In the end, many of the maritime counter-drug operations are superficially civil law enforcement oriented. Possibly, the restructuring the agreements to allow U.S. Navy direct participation could enhance the operational effectiveness of the agreements regime.

c. Expanded MIO (EMIO)

Expanded Maritime Interception Operations offers an even greater extension to standard MIO because it does not require international law or agreements, but presidential authorization through the Secretary of Defense.[141] The purpose of EMIO

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139 Andrew Norris, "Bilateral Agreements: They're Not Just for Drugs Anymore," *U.S. Coast Guard Proceedings* 66, no. 2 (Summer 2009), 70, http://www.uscg.mil/proceedings/summer2009/articles/70_Norris_Bilateral%20Agreements.pdf.

140 Kraska, *Contemporary Maritime Piracy*, 153.

141 Ibid.

is primarily an anti-terrorism tool seeking to "deter, degrade, and prevent attacks against the U.S. and its allies,"[142] but it can really be seen as a tool of the national security agenda. Essentially, EMIO can be used in any situation affecting national security, as seen appropriate by the Executive. Even without UNSCR support, EMIO was used to support Global War on Terror by intercepting terrorists, and terrorist related material[143] The Navy uses EMIO authority currently to conduct CMF's MSO patrols in support of Operation Enduring Freedom and Operation New Dawn in the Middle East, Horn of Africa, and Indian Ocean,[144] but the authorities are applicable anywhere. This measure is extremely useful to counter problems posed by grey areas between maritime security threats, as long as the threat deemed sufficient to warrant executive authority. To determine how often EMIO is employed and to what effect creates an interesting avenue for further research. Expanded Maritime Interception Operations will probably be sufficient for a majority of maritime threat instances, but may be limited in immediate threat situations due to the time it takes to get the necessary authorizations. This is where self-defense governed by the rules of engagement (ROE) can in most instances fill the gap.

d. Self-Defense

Self-defense can be considered the fastest means to take actions in immediate threat situations, which can occur in piracy, maritime terrorism, and WMD scenarios. If there is immediate threat to life or property, self-defense authorizes the use of law enforcement techniques (search and seizure) to prevent attacks. There are three types of self-defense that can apply to the U.S. Navy in an immediate threat situation: individual, unit, and collective. As established by the Chairman of the Joint Chiefs of Staff (CJCS) Instruction (CJCSI) 3121.01B Standing ROE (SROE)/Standing Rules for the Use of Force (SRUF), commanders are to protect the "U.S., U.S. forces, and other

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142 CJCS, *Joint Publication 3-27*, V-10.

143 CTF 150 and CTF 152 in the Middle East utilize EMIO in their counter narco-terrorism MSO. Hodgkinson, et al., "Challenges to Maritime Interception Operations in the War on Terror," 626.

144 CMF, "Combined Maritime Force," (n.d.), http://www.cusnc.navy.mil/cmf/cmf_command.html.

designated persons or property."[145] The Suppression of Unlawful Acts at Sea Convention furthers the requirement to protect any innocent maritime asset, therefore this can be seen as an extension of either unit or collective self-defense. Standing Rules of Engagement (SROE)/Standing Rules for the Use of Force (SRUF) instructs that the least means of force should be utilized and deadly force is only authorized if the situation dictates and all other reasonable means are exhausted.[146] This means that law enforcement techniques are the most preferable way to address these situations. Commanders may have difficulty reconciling restrictive PCA/DoD policy with authorized reasonable least force self-defense measures in imminent threats scenarios.

4. Summary

Since the Navy's law enforcement powers are only restricted by policy, exceptions to policy can and are sometimes used to allow the Navy to conduct maritime law enforcement (or related activities). International law, especially UNSCRs, and executive authorities also provide the Navy with exceptions to PCA and give the Navy considerable latitude in confronting maritime security threats. However, the Navy's adherence to PCA and its related policy creates the restrictions that prevent the Navy from conducting law enforcement at home and abroad.

C. THE NAVY'S LEGAL AUTHORITIES—AS THEY APPLY TO MARITIME SECURITY THREATS

This section of the chapter will look at what authorities and how the Navy can use its authorities to disrupt the *National Strategy for Maritime Security*'s indentified maritime security threats. It will also determine what powers the Navy has to allow for prosecution of offenders, since prosecution is an important part of law enforcement. There are three very important caveats to keep in mind when addressing the authorities to confront threats. First, the default answer to the threats is that the Navy does not normally conduct law enforcement. Second, in instances where the U.S. does not have jurisdiction,

145 DON, NWP 1-14M, 4–6.

146 Ibid.

it requires the consent of the nation that does have jurisdiction over the threat to allow law enforcement actions. Third, the President can waive restrictions on authorities, if it is necessary for national security, as long as it is constitutional.

1. Terrorism

The Navy has several authorities that allow it to combat terrorism. Suppression of Unlawful Acts at Sea Convention and the 2005 SUA protocols provide the international authorities for the Navy to intercept vessels suspected of carrying or engaging in terrorist activities. Expanded maritime interception operations and self-defense are two executive authorities that authorize the Navy to engage maritime terrorist threats. While the Navy can disrupt the threats and detain terrorists, there is no standard legal regime to allow for the arrest and prosecution of terrorists unless by agreement with another nation. The Navy has no authority to arrest terrorists for prosecution in U.S. courts.[147]

2. Weapons Proliferation

Weapons proliferation refers typically to WMD movements,[148] and not small-arms trafficking, which is normally considered a customs issue. The Navy derives its authorities for interdict and disrupts vessels with WMD under the SUA Protocols, UNSCR 1540, PSI, and EMIO. If the crime involves nuclear material, the Navy has statutory authority to assist directly in law enforcement (18 USC §831).[149] However, if the offenders are to be prosecuted abroad, it would either require a bilateral or multilateral agreement for another country to prosecute (which is what PSI provides). Similar to terrorism, The Navy has no authority to arrest offenders directly involved with WMD for prosecution in U.S. courts.[150]

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147 Rosen, *USN-USCG Integration*, 20.

148 A weapon of mass destruction is any destructive device (bombs, missiles, mines, etc.) as defined in 18 USC § 921, any weapon with the purpose to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals; any weapon involving a biological agent, toxin; or any weapon that is designed to release radiation or radioactivity that is hazardous to human life. 18 USC § 2332A, http://www.law.cornell.edu/uscode/text/18/2332a.

149 Rosen, *USN-USCG Integration*, 8.

150 Rosen, *USN-USCG Integration*, 20.

3. Piracy

The reason the U.S. Navy actively prosecutes piracy today is based on the combination of historical tradition, its visibility and importance to economic security, and Executive pressure.[151] Since piracy is considered a universal crime, the authorities that allow the Navy to conduct anti-piracy missions are well established in international law and United Nation Security Resolutions.[152] Piracy is one of the rare threats for which The Navy has domestic law enforcement authority (18 USC §1651) to arrest and allow prosecution of pirates in U.S. Courts. The successful prosecution of the pirates arrested by crew of the USS Nichols provides the case in point.[153] Despite the Navy's authority to prosecute piracy, it is not always competent in its prosecution, as witnessed in nearly identical case of the USS Ashland.

4. Drug Trafficking and Other Illicit Trafficking

The Navy has little to no authority for disrupting and prosecuting drug trafficking or other forms of illicit trafficking (e.g., money laundering and firearms). Under the international law, the UN Convention on Illicit Traffic of Narcotics and Psychotropic Drugs (1988) and The United Nations Convention against Transnational Organized Crime (2000), including its subsequent protocols, provide international authority for countering drug trafficking or other forms of illicit trafficking. However, these crimes are not considered universal crimes, but routine or regular crimes; therefore, they are seen as customary law enforcement missions that the Navy is not allowed to directly participate

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151 George W. Bush, "Memorandum on Maritime Security (Piracy) Policy" (June 14, 2007). Anti-piracy enforcement authority is well established in U.S. Naval doctrine, especially as Anti-piracy was considered the Navy's core task in the late eighteenth and early nineteenth centuries. Kraska, *Contemporary Maritime Piracy*, 108–112.

152 The 1958 Geneva Convention on the High Seas, Title 18 implementation of SUA (including the updated 2005 protocols to SUA), and obligations to UNCLOS as a matter of national policy. United Nations Security Council Resolutions (UNSCRs) 1816 (2008), 1846 (2008), 1851 (2008), and 1897 (2009) reestablish the importance of suppressing piracy, including through military means, as set forth in the 1982 UNCLOS.

153 It marks the first successful piracy trail since the U.S. Civil War. Kraska, *Contemporary Maritime Piracy*, 114.

in due to PCA.[154] For counterdrug missions, this is almost contradictory because the DoD is the main agency for detection and monitoring of drug trafficking into the United States and legislatively mandated to provide support short of actual interdiction and arrest.[155]

There is one exception to counterdrug restrictions and that is narco-terrorism. As long as a connection can be made between terrorism or another enemy and drug trafficking, counterdrug missions can be conducted under EMIO. This was the case in 2003 when the USS Decatur intercepted several vessels in the Arabian Gulf with over two tons of narcotics worth eight to ten million dollars. These vessels were known to have links with al Qaeda.[156] EMIO is conducted for narco-terrorist missions involving Afghanistan's opium smuggling in Operation Enduring Freedom.[157]

In order to mend the seams between support and actual LE functions, Congress mandates that U.S. Navy vessels carry U.S. Coast Guard LEDETs.[158] LEDETs become an important maritime security tool for U.S. Navy units because they are deployed around to world to legally support the Navy's maritime security missions. Bilateral/multilateral agreements offer the other way to allow the Navy to conduct LE against illicit trafficking. The prohibition again domestic law enforcement and lack of federal laws prevent the Navy from arresting and prosecuting these threats in U.S. courts.

5. Slave Trade and Trafficking in Persons (TIP)

Just as international law recognizes piracy as a universal crime, slave trade is also recognized as a universal crime. International law and U.S. statutory law (18 USC

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154 Rosen, *USN-USCG Integration*, 17.

155 *National Defense Authorization Act, Fiscal Year 1989;* 10 USC §124).

156 Hodgkinson, et al., "Challenges to Maritime Interception Operations in the War on Terror," 649.

157 Ibid.

158 Evan Munsing and Christopher J. Lamb, "Joint Interagency Task Force–South: The Best Known, Least Understood Interagency Success," *Institute for National Strategic Studies Strategic Perspectives* 5, (June 2011), 8, http://www.ndu.edu/inss/docuploaded/Strat%20Perspectives%205%20_%20Lamb-Munsing.pdf.

Chapter 77) give permission for the Navy to act in a law enforcement capacity, including arrest and possible prosecution of offenders.[159]

Trafficking in Persons is arguably the modern day equivalent to slave trade. Despite contemplation to declare TIP as slave trade, the connection has not officially been made.[160] As such, the 2000 U.N. Convention Against Transnational Organized Crime and two of its protocols[161] is the primary international instrument covering this. Specifically, Article 8 permits a flag state to authorize another state to board and search vessels suspected of TIP.

This is not an easy problem area for ships to randomly address. It requires actionable intelligence and interagency/international cooperation, as they are the key components to this sort of operation, in order for the U.S. Navy to deal with this threat. Low mission priority, coupled with the fact TIP is very similar to illegal seaborne migration, is a mission that the U.S. Navy is neither practiced nor comfortable in prosecuting, despite the international justification to do so. Again, the Navy has no statutory right to enforce U.S. domestic law for arrest and prosecution of offenders in U.S. courts.

6. Illegal Seaborne Migration

Illegal seaborne immigration is addressed by alien migrant interception operations (AMIO), which is defined as "civil or military actions to prevent alien migration from illegally entering the United States."[162] The U.S. Navy can conduct AMIO for 'humanitarian reasons'[163] to stop illegal immigration but not perform LE functions, such

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159 DON, NWP 1-14M, 3–4, 3–6.

160 Hodgkinson, et al., "Challenges to Maritime Interception Operations in the War on Terror," 655.

161 The Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. http://www.unodc.org/unodc/en/treaties/CTOC/index.html?ref=menuside.

162 DON, Naval Warfare Publication (NWP) 3-07.4: *Maritime Counter Drug and Alien Migrant Interdiction Operations*, 1–2.

163 The 1974 London Convention on the Safety of Life at Sea (SOLAS) and UNCLOS create the requirement for vessels to render assistance and alleviate distress for dangerous conditions, as seen in many migrant cases. DON, NWP 3-07.4, 4–20.

as customs enforcement. Unless a vessel is carrying a LEDET on board, the line remains unclear as to when the U.S. Navy can declare AMIO for humanitarian purposes. The Navy can encounter migrants through the course of their normal duties, or can be detailed to the U.S. Coast Guard in support of mass migrations, as experienced with mass Cuban and Haitian seaborne migrations in the early 1990s.[164]

7. Illegal, Unreported, and Unregulated (IUU) Fishing

Fisheries Enforcement is not a standard Navy mission. However, the High Seas Driftnet Fisheries Enforcement Act, a law created to implement UN General Assembly Resolution 44/225, mandates that DoD commanders "will plan for and use all-source intelligence and maritime monitoring and collection assets, as appropriate, to detect and track prohibited driftnet fishing and driftnet fishing vessels on the high seas."[165] As a matter of policy, the DoD may provide support to law enforcement personnel, but it has no authority to engage in an arrest or seizure of a vessel engaged in illegal driftnet fishing activity.[166]

The Navy can participate directly in fisheries law enforcement due to a statutory exception to PCA (Magnuson Act, 16 USC §1861(a)).[167] As a matter of interpretation of the 16 USC §1861, the Coast Guard, as the lead agency for fisheries law enforcement, could fashion an agreement or memorandum of understanding (MOU) to allow the Navy to participate directly in fisheries law enforcement. However, there are no domestic laws that allow the Navy to enforce fisheries laws independently of federal law enforcement agencies, so it can only assist other agencies in search and seizure.

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164 The 1974 London Convention on the Safety of Life at Sea (SOLAS) and UNCLOS create the requirement for vessels to render assistance and alleviate distress for dangerous conditions, as seen in many migrant cases. DON, NWP 3-07.4, 3–1.

165 CJCS, CJCS Instruction 2430.01A: *Operational Support of High Seas Drifnet Fisheries Enforcement* (6 June 2002), 2, http://www.dtic.mil/doctrine/jel/cjcsd/cjcsi/2430_01a.pdf.

166 Ibid.

167 Rosen, *USN-USCG Integration*, 8.

8. Summary

The Navy can derive its powers to confront almost every maritime security threat, either through international or domestic authorities. Some form of international law or treaty gives international justification for the disruption of almost every maritime threat, while domestic authorities to do the same are much fewer. However, in most circumstances, restrictive domestic law and policies prevail over international authorization. This limits the law enforcement powers for the Navy, especially in allowing the prosecution of maritime security offenders.

D. CONCLUSION

There are no constitutional or statutory restrictions on the military, but PCA's legacy and DoD policy still dictate the restrictive rules that govern the U.S. Navy's authority to conduct law enforcement. While international law may provide justification for maritime security enforcement, domestic law restricts its applicability. This strict adherence to DoD policy creates a dichotomy compared to the flexible authorities and many exceptions the U.S. Navy can exploit in order conduct LE for maritime security missions.

This chapter shows the current legal regime governing the Navy's authorities to enforce maritime security is large, complex, and in many ways contradictory. Despite its complexity, the Navy's unwavering adherence to PCA prevents the Navy from accepting maritime law enforcement as a critical tool from maritime, despite its warranted use. The changing security environment sees the use of international law and policy exceptions in order to address the rising maritime security threat. Due in part to PCA, the Navy has not prepared itself for the law enforcement roles. This leads to the question: since the Navy is not prepared for law enforcement, how does that affect both the Navy's effectiveness in maritime security and maritime security as a whole?

IV. GAPS/DEFICIENCIES IN MARITIME SECURITY OPERATIONS

A. INTRODUCTION

As stated in Chapter I, maritime law enforcement (LE) offers the best means to deter and defeat the criminal nature of most maritime threats at sea. Since maritime law enforcement is not a compulsory Navy role, this chapter will assess the impact of the Navy's limited law enforcement role on maritime security. For law enforcement to be effective, organizations require three key factors: authority, capability, and capacity. *Authority:* (laws, policies, and LE powers) grants permission to an organization to apply their capability and capacity to the problem. *Capability:* (skills, proficiency, equipment, and information) determines how and what those assets (capacity) do to cover the problem. *Capacity:* (defined as a number of personnel, platforms, and/or systems), determines the amount of effort the organization can use to address the problem. These factors are critical to understanding the gaps/deficiencies/shortfalls in the Navy's ability to conduct maritime security operations (MSO), as well as its effect on overall maritime security.

As discussed in Chapter II, Navy MSO is conducted using two approaches: Direct operations (patrolling/interdiction/security enforcement) and indirect operations (building partner capacity/information sharing/maritime domain awareness). [168] These two approaches will serve as the framework from which gaps in capacity, capability, and authority can be identified. The first part of this chapter identifies and explains the important gaps/deficiencies/shortfalls in capacity, capability, and authorities that affect the Navy's direct approach operations to MSO. The second part of this chapter identifies and explains important gaps/deficiencies/shortfalls in capacity, capability, and authorities that affect the Navy's indirect approaches to maritime security. The identified

168 CNO, *The Navy's Vision Confronting Irregular Challenges*, 3.

gaps/deficiencies/shortfalls in this chapter are not exhaustive, but they are critical to understanding how the limited law enforcement roles of the Navy affects MSO and maritime security as a whole.

B. DIRECT APPROACH OPERATIONS

Direct approach operations are essential to discuss because they determine the Navy's ability to conduct and confront maritime security operations. The direct approach to maritime security involves the Navy in actual enforcement missions, whether providing deterrent presence by patrolling waters or actually interdicting and boarding a vessel. The Navy's direct approach to maritime security operations poses problems for each key factor of maritime security: authority, capability, and capacity. This section addresses the problems for each key factor as it relates to general MSO, as well as problems specific to homeland maritime security, and specific to international maritime security. First, authorities will be discussed. Authorities are the most important aspect to maritime security because it gives the Navy the right to conduct maritime law enforcement. Without it, there is no purpose to employ skills and platforms necessary to enforce maritime security. Therefore, it is important to establish the operational effects caused by the Navy's restrictive law enforcement authorities. Second, capabilities will be covered. Personnel need to be properly trained and equipped to use police powers in maritime security. As such, determining the Navy's deficiencies in LE skills and their effects on MSO is important. Lastly, capacity will be discussed. Since the Navy has the platforms and people to conduct maritime security, but not the authority or skills, it becomes important to identify the capacity shortfalls created by restrictions and lack of skill in maritime LE.

As the Coast Guard is integral to U.S. and Navy maritime security operations and is the only major maritime LE service at home and abroad, its gaps/shortfalls in direct approach operations that directly and indirectly affect the Navy in MSO are also discussed.

1. Authority

Legal authorities are important in maritime security operations because authorities determine what an organization legally can and cannot do. The last chapter establishes the Navy's current authorities in MSO, but this section covers some of the operational effects caused by the Navy's restrictive law enforcement authorities. Two main problems affecting Navy MSO are; restrictive authorities limit desirable operational outcomes, and the complex legal/policy system, with ad hoc and inconsistently employed LE authority exceptions can create operational confusion for Commanders.

a. General MSO Authority Gaps

The first authority gaps are that the Navy's limited authority only allows it to address a small portion of the maritime security threats (Figure 1). While the figure shows that the Navy can confront roughly half of the maritime security threats, those threats have the lowest frequency and likelihood of occurrence, with the exception of narco-terrorism.[169] This means a majority of maritime security threats are outside of the Navy's authority to confront. For the Navy to engage narco-terrorists, the threats need to be linked (typically by means of intelligence cuing) clearly to a terrorist organization.[170] Consequently, the extra step to ensure the link and probable ambiguity of certain cases will limit the Navy's interdiction of those threats. With the Navy only able to challenge a small portion of maritime security threats, it degrades the Navy's effectiveness in overall maritime security.

169 Farrell, "Maritime Terrorism: Focusing on the Probable," Thachuk and Tangredi, "Transnational Threats and Maritime Responses," 61–73.

170 John Wagner, in discussion with the author, Washington, DC, December 9, 2011. John Wagner is the NCIS Special Agent in Charge of the Washington, DC Field Office. He worked on creating the Antipiracy Concept of Operations for the Navy in 2009.

Current Authorities Versus Maritime Security Threats		
Maritime Security Threat	**Coast Guard**	**Navy**
Drug-Trafficking	✓	
Environmental Destruction	✓	
Human Trafficking	✓	
Illegal Seaborne Migration	✓	
Illegal, Unregulated, and Unreported (IUU) Fishing	✓	
Narco-Terrorism (drug trafficking linked to terrorism)	✓	✓
Piracy	✓	✓
Slave Trade	✓	✓
Terrorism	✓	✓
WMD	✓	✓

Figure 1. Current vs. Proposed Expanded Maritime Security Authorities[171]

The lack of authority that prevents the prosecution or punishment of threats creates the second authority gap. To manage maritime security threats ideally requires two actions: to stop or disrupt the threat and to punish (in most cases arrest and prosecute) those responsible.[172] Having the capability and authority to do both is important to increasing the effectiveness of operations.

[171] Prepared by author, threats are derived from *National Strategy for Maritime Security*.

[172] Randall, "Ready for the Future?," 6.

But while disruption offers immediate success, the ability to punish proves to have a more far-reaching success. How naval assets can disrupt or stop threats is important. Most maritime security threats will not likely require the employment of destructive kinetic force because of the nonmilitary nature of the threats and/or political and civil sensitivities. Drugs, people, and weapons, smuggled by increasingly sophisticated methods on vessels, require the necessary authority and expertise to perform proper searches to find them. For example, Coast Guard searches of suspected vessels, empowered by their legal authority, could take several days, and usually employ personnel who are experts at understanding commercial vessels in order to detect anomalies.[173]

Punishment is important because it offers two means to further efforts against maritime security threats. Punishment creates a greater deterrent effect and it can be leveraged to obtain information needed to more effectively address future threats. Joint Interagency Task Force South (JIATF-S) provides evidence of the positive effects in leveraging both parts. JIATF-S, being primarily a DoD organization, used to prioritize drug seizures over prosecution, in part because it lacks solid law enforcement knowledge, and culturally, did not care to learn.[174] Eventually, JIATF-S learned prosecutions led smugglers to cooperate with officials, which led to more intelligence sources leading to more operations, arrests, and prosecutions.[175] JIATF-S operations have the highest drug disruption/capture rate for the U.S.[176] JIATF-S provides an example of aligning military, law enforcement, and authorities to become an effective means in confronting maritime security threats. Countries such as France, with legal systems infamous for being harsh on drug smugglers, benefit from their prosecutions. The ability to disrupt and punish has great implications for the Navy in managing maritime threats, but its ability to do both leads to some of the important gaps identified in Navy maritime security operations.

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[173] U.S. Coast Guard, "Coast Guard Drug Interdiction," October 31, 2011, http://www.uscg.mil/d13/dep/drug_seizure_statistics.asp.

[174] Munsing and Lamb, "Joint Interagency Task Force–South," 57.

[175] Ibid.

[176] Ibid.

The second authority gap is the complexity and contradiction it creates in confusion for commanders. The complexity of maritime law is well recognized. It has been metaphorically referred to as a Rubik's Cube denoting the complexity of required actions from different actors and jurisdictions needed to interact in order to obtain an optimal solution.[177] Maritime law, combined with DoD policy, becomes ultimately more complex. For the Navy, this complexity can negatively affect maritime security operations. Felicetti and Luce's severe assessment of the complexity of the DoD policy restrictions helps emphasize the affect on maritime security by stating,

> DoD policy on the Posse Comitatus Act—a set of overbroad limits that bear little resemblance to the actual law, combined with a bewildering patchwork of exceptions—impedes this important mission. It is a rotten legal foundation for U.S. Northern Command and creates bizarre situations where the U.S. Navy perceives itself to have less authority to conduct some national defense missions as threats get closer to America.[178]

There is precedent for the military to self-impose law enforcement restrictions at the expense of the mission. Military operations during the 1992 Los Angeles riots present an example of this. An excerpt from Lieutenant Colonel Christopher M. Schnaubelt's "Lessons in Command and Control from the Los Angeles Riots" exemplifies the point,

> The substantial reduction in military support following federalization is frequently attributed to legal restrictions imposed by the *Posse Comitatus Act of 1878* (United States Code, Title 18, Section 1385), commonly referred to as Posse Comitatus. This belief, however, is erroneous. The Presidential Executive Order of 1 May provided JTF-LA [Joint Task Force Los Angeles] the authority to "restore law and order," which included the performance of law enforcement activities; Posse Comitatus therefore could not limit the military's options in this circumstance. Nevertheless, the JTF-LA commander's mission analysis concluded that his essential tasks did not include the requirement to *maintain* law and order. According to Major General Marvin Covault, the JTF commander, "It was not the military's mission to solve Los Angeles's crime problem, nor were

177 James Kraska and Howard S. Levie, "Maritime Security Operations" (PowerPoint brief, U.S. Naval War College, n.d.), 8, http://www.navy.mi.th/judge/PDF/3%20MSO%20Kraska%20Bangkok1%5B1%5D.pdf.

178 Felicetti and Luce, "The Posse Comitatus Act: Liberation from the Lawyers," 106.

> we trained to do so." The police, the public, and the media, however, expected the military to keep the peace rather than disengage quickly.
>
> In his report concerning the military and law enforcement response to the LA riots (*The Webster Report*), former Director of the Federal Bureau of Investigation Judge William Webster wrote: It [JTF-LA] required each request for assistance to be subjected to a nebulous test to determine whether the requested assignment constituted a law enforcement or a military function. As a result, after the federalization on May 1 . . . not only were the federal troops rendered largely unavailable for most assignments requested by the LAPD, but the National Guard, under federal command, was made subject to the same restrictions, and therefore had to refuse many post-federalization requests for help.
>
> The CANG's [California Army National Guard] procedure for approving law enforcement requests had been rapid and gave maximum discretion to subordinate commanders to coordinate directly with the supported law enforcement entities. Before the establishment of JTF-LA and the federalization of the CANG, virtually 100 percent of law enforcement support requests had been approved. Following federalization, only about 20 percent were approved.[179]

Although the military could legally conduct law enforcement through a presidential proclamation, confusion between statutory laws and DoD policies and the military's self-created rules of engagement formed restrictive rules that made the use of federal and national assets less effective.[180] In fact, similar legal considerations have created concerns among operational commanders on the employment of their forces on the maritime domain as well, despite having the requisite authority.[181] This shows that *Posse Comitatus* and DoD policy are deeply ingrained in the military psyche to the point that it interferes in military operations. This includes the DoD's self-imposed extra-territorial restrictions to law enforcement. The legal system is sufficiently complicated that

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179 Christopher M Schnaubelt, "Lessons in Command and Control from the Los Angeles Riots," *Parameters* 27, no. 2 (Summer 1997), 88–109, http://www.carlisle.army.mil/usawc/Parameters/Articles/97summer/schnau.htm.

180 Matt Matthews, *The Posse Comitatus Act and the United States Army: A Historical Perspective* (Fort Leavenworth, KS: Combat Studies Institute Press, 2006), 59.

181 Kent D. Thew, in discussion with author, Alameda, CA, November 24, 2011. Kent Thew is the Technical Director at the Coast Guard's Maritime Intelligence Fusion Center Pacific (MIFCPAC); John Wagner, in discussion with the author.

commanders do not need an extra cognitive burden in deciding whether their forces can or cannot engage a threat.

b. Homeland Authorities Shortfalls

For authorities, the implications of PCA and different rules of force for military operating in the homeland are addressed.

The first homeland-specific gap is that psychological implications of PCA reduce the likelihood of employing DoD LE exceptions. Many of the implications of the Posse Comitatus Act have already been discussed, but there is one more dimension to consider relating to homeland-specific maritime security operations. The statutory affect of Posse Comitatus Act is limited to U.S. territorial seas and U.S. persons, creating a tangible barrier between domestic operations and those abroad. Although the Navy is not restricted statutorily to PCA, it has psychological implications for the Navy's involvement in civil affairs (law enforcement) the closer to the homeland the Navy operates.[182] Policy exceptions are less likely to be enacted for homeland maritime security missions than abroad, for fear of overstepping the military/civil divide. The nearest example comes from the employment of LEDETs in support of counter-transnational criminal organization missions in the Caribbean and Eastern Pacific. These routine maritime security missions are in closest geographic proximity to the U.S., as well as having the greatest chance of involving U.S. persons. The largest allocation of LEDETs in these areas ensures appropriate legal coverage for any scenario the Navy may encounter.[183] The existence of PCA creates an evident LE restriction line at the territorial sea line. The closer the Navy approaches it, the tighter the restrictions.

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[182] Homeland Security Act of 2002, Section 886: Sense of Congress reaffirming the continued importance and applicability of the *Posse Comitatus* Act, as excerpted in Rosen, *USN-USCG Mission Integration*, 28.

[183] Four LEDET teams are dedicated to SOUTHCOM versus the two and half allocated to CENTCOM. Numerous illicit trafficking events involve either U.S. vessels and/or U.S. persons. Edward Feege and Scott C. Truver, "Homeland Security: Implications for the Coast Guard" in *Globalization and Maritime Power*, ed. Sam Tangredi (Washington, DC: National Defense University Press, 2002), 447–450.

The second homeland security authority gap is that the difference between SROE and SRUF can create confusion over the use of force. When engaging a maritime security threat, it may become necessary to employ force to stop it. Due to international and domestic sensitivity to employment of force, any action taken "must be necessary to achieve a legitimate end and is reasonable under the circumstances."[184] To ensure this, the Joint Chiefs of Staff created standing rules of engagement (SROE) and standing rules on the use of force (SRUF).[185] The construct of SROE and SRUF may create confusion for the limits on the use of force in certain maritime security missions. SROE delineates the circumstances and limitations that military forces will initiate and/or continue combat engagement with enemy forces, while SRUF restrains the use of force based on sensitive political concerns, typically requiring the use of minimal force to stop a threat.[186] In most cases, minimal force requires non-deadly and non-kinetic means to interrupt a threat. SROE is applicable to military forces outside U.S. territory (including territorial seas) and in HD missions.[187]

Since Navy forces primarily operate outside U.S. territorial waters and do not operate under civil authorities, most personnel understand and are accustomed to SROE. SRUF applies to military forces operating in U.S. territories and/or in support of civil authorities.[188]Given that SROE is closely associated with combat, it is presumable that SRUF's intent is to resemble civil law enforcement use of force standards. SRUF is not nearly as understood and practiced by military forces. Training and perceptual differences could create a problem if Navy personnel are faced with a maritime threat in areas of U.S. jurisdiction, such a maritime homeland security mission. The low-end threats posed by most maritime security threats may warrant using SRUF over SROE.

184 Craig H. Allen, "Limits on the Use of Force in Maritime Operations in Support of WMD Counter-Proliferation Initiatives," in *International Law Challenges: Homeland Security and Combating Terrorism*, eds. Thomas McK. Sparks and Glenn M. Sulmasy (Newport, RI: Naval War College), 82.

185 See Chairman Joint Chiefs of Staff Instruction (CJCSI) 3121.01(series): *Standing Rules of Engagement/Standing Rules for the Use of Force for US Forces* for more detail concerning the use of force

186 Craig H. Allen, "Limits on the Use of Force in Maritime Operations in Support of WMD Counter-Proliferation Initiatives," 83–85.

187 DON, NWP 1-14M, 4–5.

188 Ibid., 4–5–4–6.

For example, during the 1992 Los Angeles riots, Marines and police responded to a domestic disturbance. After arriving at the location, the police announced themselves followed by a shotgun blast response. As the police readied to enter the building, they called to the Marines, "Cover me!" In response, the Marines fired approximately 200 rounds through the door.[189] The most appropriate action should be apprehension. Lethal force should only be applied out of absolute necessity. The order "cover me" to a marine in a combat situation means to lay down covering fire. The marines were not trained in law enforcement situations in 1992. For law enforcement, violence is the least desirable means to resolve a situation in order to minimize the disruption of society. The nature of the maritime security threats place maritime security operations on the seam of civil sensitivities, so it is imperative the Navy understands the concept that maritime security needs to be performed with a minimal disruption to society or commerce. This is something Coastguardsmen have internalized for conducting law enforcement at sea. Alexander Hamilton's *Letter of Instructions* to the Commanding Officers of the First Revenue Cutters (in essence, the founding constitution of the Coast Guard) prescribes the qualities needed in Revenue Cutter Commanding Officers who are about to embark on law-enforcement missions,

> Their deportment may be marked with prudence, moderation and good temper…They cannot be insensible that there are some prepossessions against it, that the charge with which they are intrusted [sic] is a delicate one, and that it is easy by mismanagement, to produce serious and extensive clamour [sic], disgust and odium…They will always keep in mind that their countrymen are freemen…They will, therefore, refrain, with the most guarded circumspection, from whatever has the semblance of haughtiness, rudeness, or insult…They will endeavor to overcome difficulties, if any are experienced, by a cool and temperate perseverance in their duty--by address and moderation, rather than by vehemence or violence.[190]

Awareness of the sensitivities involved in law enforcement is essential, especially when involving U.S. persons.

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189 Tony Pfaff, "Risk, Military Ethics, and Irregular Warfare," *Foreign Policy Research Institute E-Notes*, December 2011, http://www.fpri.org/enotes/2011/201112.pfaff.irregularwarfare.html.

190 Alexander Hamilton, *Letter of Instructions to the Commanding Officers of the First Revenue Cutters*, June 4, 1791 (transcribed copy), 3–4, http://www.uscg.mil/history/faqs/hamiltonletter.pdf.

If a Navy asset is single-handedly faced with a hostile maritime security threat involving U.S. persons or in U.S. territory, how do the legal limits affect the rules for the use of force? The minimum required use of force is apprehension. If the Navy does not have the authority to apprehend, unless for self-defense purposes, then the perpetrator cannot be prosecuted and may be set free. In addition, if the minimal use of force is required, what legal protections do Navy members have? For example, it is a federal crime to harm a federal officer while they are attempting to enforce the law, which provides incentive not to harm boarding team members and it allows the expansion of U.S. jurisdiction, if needed.[191] The Coast Guard is also covered by indemnity during operations in situations where they have to fire at or into a vessel.[192] If something were to happen during the course of stopping a vessel, they are not liable for criminal charges and damages. For the Navy, which draws many of its protections from the Law of Armed Conflict (LOAC), many maritime security threat scenarios are not considered armed conflict scenarios, so LOAC protection is not extended to the Navy. Protections and indemnity provide extra incentives for illegal actors to cooperate and reduce the risk aversion to commanding officers and crews in involvement in a law enforcement operation.

There are counter points to the SROE/SRUF confusion argument. There are no indicators or case studies to show the Navy is unable to operate under the minimal use of force. The operating areas normally place the Navy outside U.S. territorial seas and only a small fraction of world shipping falls under U.S. jurisdiction, so the chances of being directly involved in a SRUF scenario is small. In some instances, the U.S. can create a military jurisdiction to overcome some of these obstacles. In support of OEF and OIF, the U.S. created legally sanctioned exclusion zones that allowed the Navy to conduct military maritime security activities under the Law of Armed Conflict (LOAC).[193] Another part of this is possibly due to the design of standard boarding

[191] 18 USC § 2237.

[192] 14 USC § 637.

[193] DON, NWP 1-14M, A-1–C-2.

capabilities. Standard Visit, Board, Search, and Seizure (VBSS) teams, for example, train for only Level I (compliant) and Level II (noncompliant, low freeboard) boarding. Both are presumably nonviolent or nonhostile, so the teams rarely approach a boarding scenario with the need to apply force. If so, then force should be employed for defense only. If a boarding is suspected to be Level III or IV (noncompliant, high freeboard or hostile respectively), then specialized boarding teams will be used.[194] Many argue that the military should not have to make the distinction between minimal force and proportional force because the distraction of minimal force will degrade the lethality of military forces. [195] The lessons of the last two decades have clearly shown the military needs to be sensitive to operating in both lethal force and minimal force operating environments.

PCA and use of force rules present unique gaps for homeland maritime security missions. Psychological implications from PCA may reduce the willingness to place Navy assets in law enforcement roles the closer to the homeland they operate. Different rules for the use of force that also apply to the Navy is that they are operating in U.S. territorial waters and against U.S. persons. Commanders and their crews may find a situation difficult to reconcile what force to apply, especially if restricted by legal authorities. Although most maritime security scenarios will probably be benign, situations that do escalate could agitate political sensitivities, if Navy forces are not well versed in both applying violent and nonviolent means to stop a threat. This is especially true if Navy operations focus on the littorals, where interaction with nations and people increase.

c. Overseas Authorities Gap

The contradiction between domestic law restrictions and DoD policy and international/customary law creates an authorities gap for overseas operations. Bilateral

194 These can include SOF, USCG Advanced Insertion Teams, and the Marine Corps's Maritime Raid Force.

195 Watson, "A Look Down the Slippery Slope: Domestic Operations, Outsourcing, and the Erosion of Military Culture."

and multilateral agreements are excellent for expanding jurisdictions to enable maritime forces to conduct MSO. The Navy is not regularly included in these agreements, preventing them from having the jurisdiction to confront maritime threats on vessels and people from foreign countries.

The authority gap for international maritime security is that U.S. domestic laws restrict the Navy authorities given by international law. Without the support, domestic laws that allow the Navy to enforce federal law, many of the international initiatives to confront threats are rendered useless. This is because most UN conventions and protocols are not self-executing, and therefore, rely on domestic laws to make them applicable, [196] nor do they place most maritime security threats under universal jurisdiction. The suppression of piracy is an example where U.S. law allows the Navy to participate, and the suppression of international narcotics provides an example where the lack of U.S. law prohibits Navy participation.[197]

Since the Navy cannot enforce federal law, it precludes the Navy from enforcing most conventions and protocols, unlike the Coast Guard's Title 14 USC 89 authority, which specifically allows the Coast Guard to enforce federal laws. It is likely that the Senate's intent in favoring existing U.S. law was to preserve U.S. sovereignty rights and federalist ideals, [198] not to deliberately prevent Navy action. Consequently, domestic laws and policies diminish the intent of international law to combat maritime threats. It also creates a double standard for different threats. If the Navy can legally

196 The Senate can create exceptions to treaty obligations, which it has for the 2005 SUA Protocol, the 2000 U.N. Convention Against Transnational Organized Crime, and the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. These treaties provide a framework for countering illicit-trafficking, terrorism, and WMD proliferation.

197 The U.S. Constitution (Article I, Section 8) and 18 U.S.C. § 1651 provide the domestic authority for the Navy to enforce international law against piracy (UNCLOS, Article 100-107). UNCLOS (Article 108) and the UN Convention on Illicit Traffic of Narcotics and Psychotropic Drugs (1988) allow nations to fight against drug-trafficking, but under the legal systems of individual countries that have jurisdiction. See Chapter 3 for further information on the legal authorities for countering piracy and drug-trafficking.

198 The signing statements for those documents show where the government declares the treaties as not self-executing and the United States will follow U.S. Law under the principle of federalism. For an example refer to U.N. Convention Against Transnational Organized Crime, U.S.-U.N., October 7, 2005, United States Treaty (U.S.T.) 108-16 (Washington, DC: GPO), VII, XXIII, http://www.gpo.gov/fdsys/pkg/CDOC-108tdoc16/pdf/CDOC-108tdoc16.pdf.

combat piracy, then why not the other internationally recognized maritime threats? If the IMO and international law of the sea promote and protect American ideals and interest of good order and freedom of the seas, then by restricting the Navy's enforcement authorities, the U.S. is missing an opportunity to increase its role in promoting and enforcing those standards. Greater participation in the international maritime security regime will become increasingly important if the world security regime is becoming more inclusive, multilateral, and consensual.[199]

Authority gaps clearly exist in the Navy's maritime security operations. The legal authority gap unquestionably prevents the Navy from directly addressing the majority of maritime threats. Even with interagency help, the LEA capacity gap creates the potential for missed opportunities for the majority of Navy units operating independently. Increasing the legal authorities of the Navy can also diminish some operational legal concerns about the Navy operating in a law enforcement capacity, whether it is for homeland security missions, civil support, or global maritime security operations. As future threats continue to blur the line between civil and military, operational commanders need not only have the proper authorities, but a better understanding of them.

2. Capability

The most important maritime security capability deficiency for the Navy is the proficiency and skills needed in LE training, tactics, and procedures (TTPs). This is understandable because, normally, the Navy is not tasked to conduct law enforcement training. As such, this section will show deficiencies in the Navy's doctrine, operations, training, manning, leadership and facilities (DOTMLPF) framework for enabling law enforcement TTPs. As maritime security threats increase, the Navy finds itself more and more involved in LE-related tasks, so it becomes more important to develop the necessary skills to increase efficiency in maritime security. Since these skills deficiencies

199 Kraska, "Grasping "The Influence of Law on Sea Power," 122.

are applicable to all MSO, there is no discussion specifically relating to the homeland vs. overseas.

a. General MSO Capability Deficiencies

All of the irregular challenges studies stress the Navy's lack of training and focus on maritime security and stability missions,[200] despite regular involvement in them. The NWDC's CIC study summarizes the substantial findings from the other studies by stating,

> the Navy lacks an overarching institutionalized pre-deployment training for IW [irregular warfare]. The most ready comparison was made with the well institutionalized pre-deployment training done for traditional warfare missions…which have clearly defined training curricula, performance standards, and pre-deployment qualifications…pre-deployment training lacks the same rigor for confronting irregular challenges.[201]

Training and experience play an important role in developing the proper skills for maritime security. Law enforcement-related missions, in particular, require specialized skills to collect evidence and follow criminal procedures.[202] In fact, poor training and lack of expertise in law enforcement missions were the principal concerns that arose when the Navy was almost given law enforcement authority during the 1980s "War on Drugs" debates.[203] Ironically, the Navy is no stranger to boarding operations that are similar to law enforcement missions. In fact, by 2005, the Navy conducted over 10,300 boardings in the CENTCOM AOR alone.[204] For an organization with so much experience, why are its proficiency and skills considered a gap? The answer lies mostly within the doctrine, operations, training, manning, leadership and facilities (DOTMLPF) framework.

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200 Benedict, et al., *Confronting Irregular Challenges (CIC) Study Results*, 7; DellaVolpe, et al., *Irregular Challenges 2010 Game*, 5–8; NWDC, *Confronting Irregular Challenges in the Maritime Environment*, 6–12.

201 NWDC, *Confronting Irregular Challenges in the Maritime Environment*, 46.

202 Munsing and Lamb, "Joint Interagency Task Force–South, 70.

203 Abel, "Not Fit for Sea Duty," 470; Joel Brinkley, "Letting the Military in on the Drug War," *The New York Times*, June 30, 1985.

204 COMNAVSURFOR Brief to NDIA: Delivering Operational Readiness, 20.

The first capabilities deficiency is that the Navy lacks formal doctrine for LE. Navy doctrine for maritime law enforcement is mostly absent.[205] This is understandable because it is generally prohibited from direct involvement in law enforcement activities. The Navy's Maritime Interception Operations (MIO) doctrine resembles maritime law enforcement doctrine, because they employ similar techniques. They differ because MIO is military and political in nature and not law enforcement. Law enforcement focuses on maintaining good order based on law.[206] Most MIOs are militarily enforced barriers (or in essence a quarantine blockade) into or out of a nation or specified area to disrupt the flow of specific items (ships and cargo) to politically compel a country or group.[207] There is no true intention for law enforcement. In consequence, enforcement is selective; quickly disrupting or stopping the threat is favored over long-term solutions, and intelligence exploitation is favored over evidence collection and case packages. A member of JIATF-S summarizes the military's intent well: "DoD wants to terminate its involvement as soon after detection as possible… in order to create an appropriate distance from the prosecution of the suspects and stay off the witness stand."[208] Anti-piracy and counter narco-terrorism operations changed the nature of MIO, by introducing undeniable law enforcement elements into the operations. This posed a problem for the Navy, because little was available for inexperienced crews to determine specific requirements needed for law enforcement missions. There are several documented cases where the lack evidence precluded prosecutions.[209] The lack of doctrine prompted the Navy's Fifth Fleet, with the help of NCIS, to create specific anti-

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205 The Navy does have NTTP 3-07.11(series) Maritime Interception Operations, whose focus is on the tactical aspects of boardings. An example of law enforcement doctrine is the Coast Guard Maritime Law Enforcement Manual (MLEM).

206 DON, NTTP 3-07.11M, 2–3–2–4.

207 CJCS, Joint Publication 3-0: *Joint Operations* (August 2011), V-13.

208 Allen G. McKee, as quoted in Munsing and Lamb, "Joint Interagency Task Force–South, 13.

209 David Lobb, "Law Enforcement to Piracy: Perspectives and Challenges," (PowerPoint brief, NCIS Field Office Singapore, n.d.), 11; Sandra Jontz, "9 Suspected Pirates Freed in Somalia," *Stars and Stripes*, March 4, 2009, http://www.stripes.com/news/9-suspected-pirates-freed-in-somalia-1.88780#.TmhHTGtdDi4.email; Jeff Kline, "Maritime Security," 78.

piracy guidelines, CONOPS, and an EXORD to draw attention to those specific requirements.[210]

The second capabilities deficiency is that The Navy's interdiction training does not focus on search, seizure, and evidence collection TTPs. As mentioned earlier, boarding is the most fundamental activity in maritime security operations. Navy Visit, Board, Search, Seizure training lacks the emphasis on law enforcement techniques and procedures. The Non-Compliant Boarding, Visit, Board, Search and Seizure Team Trainer course of instruction (NCB-VBSS COI), the basic mandatory course for all VBSS team members, only dedicates two hours of the 122 dedicated training hours to document inspection, search techniques, and evidence collection.[211] The course focuses mainly on the tactical boarding techniques.[212] VBSS Boarding Officers receive slightly more training over the course their additional four-day school in conjunction with the NCB-VBSS COI.[213] Following initial training, Navy requirements list no further training in document inspection, search techniques, and evidence collection.[214] The proficiency and depth of training becomes an individual unit endeavor. The focus on tactical techniques and procedures, while undoubtedly important, is only one part of boarding. The ability to conduct inquiries, proper searches, and intelligence collection is just as important, if not more so, because they are the core tasks of a boarding that will determine the outcome. Without proper training on both, boarding becomes a motion without substance, decreasing effectiveness. The CIC Study by John Hopkins University agrees, concluding the lack of specialized training for VBSS missions is a major

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[210] John Wagner, in discussion with the author, Washington, DC, December 9, 2011; Kraska, *Contemporary Maritime Piracy*, 92.

[211] Center for Security Forces (CENSECFOR), *Training Course Control Document for Non-Compliant Boarding, Visit, Board, Search and Seizure (NCB-VBSS) Team Trainer (Revision A*) (September 2008), B-1-1 – B-1-5.

[212] Ibid.

[213] Catalog of Navy Training Courses (CANTRAC), "CIN/Course/Navy E-Learning Detail Report: Visit, Board, Search and Seizure Boarding Officer," March 12, 2012, https://app.prod.cetars.training.navy.mil/cantrac/pages/rpt_cin_lms_detail.html?cin=A-2E-0085, (DoD Common Access Card access required).

[214] Commander Naval Surface Forces (COMNAVSURFOR), COMNAVSURFOR Instruction 3502.1D: *Surface Force Training Manual* (July 2007), 3–102 – 3–103.

deficiency in maritime security operations.[215] The outcome of the cases for the USS Nichols and USS Ashland pirate incidents presented in Chapter I help illustrate that point, where the former ship had LEA assistance and the latter did not. Access to the expertise and training from Coast Guard and NCIS agents can play a key role in building proficiency for VBSS teams.[216]

The third capability deficiency is that the organizational and manning structure prevents long-term skills development. Even with some training and gained operational experience, the requisite skills can atrophy with sporadic employment stemming from the multi-mission nature of Navy units. The organizational and manning structure for VBSS and NECC maritime security units does not allow for long-term critical skills retention. For example, VBSS is a collateral duty, so it competes for time and attention with primary duties and other mission areas.[217] In addition, the standard crew rotation rate assures quick turnover of team members, therefore precluding expertise buildup. The NECC suffers from the same issues, because traditionally oriented career paths and incentives reduce long-term dedicated expertise.[218]A recent policy paper from *Brookings* claims that similar problems afflict standard multi-mission Coast Guard units, despite a more robust LE boarding program and operational experience.[219] To help with this issue, the Coast Guard created the U.S. Coast Guard Maritime Law Enforcement Academy in 2004 and the Maritime Enforcement Specialist rate in 2010 to support "the standardization and professionalism of the Coast Guard's entire Maritime Law Enforcement Training System."[220] If it is an issue for the Coast Guard, it can only be expected to be worse for the Navy who does not engage in these operations on the scale

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215 Benedict, et al., *Confronting Irregular Challenges (CIC) Study Results*, 57.

216 Monique K. Hilley, "Navy, Coast Guard Boarding Teams Train Together to Combat Piracy," *Navy News*, January 21, 2009, http://www.navy.mil/search/display.asp?story_id=41842.

217 Rachael L. Leslie, "USCG, Whidbey Island Team Up To Fight Piracy," *U.S. Naval Forces Central Command*, September 11, 2011, http://www.cusnc.navy.mil/articles/2011/110.html.

218 NWDC, "CNO Innovation Continuum," (PowerPoint brief, NWDC 2010), 17.

219 Randall, "Ready for the Future?," 39–40.

220 U.S. Coast Guard, "Maritime Law Enforcement Academy," January 20, 2012, http://www.uscg.mil/mlea/default.asp.

of the Coast Guard. This expertise/proficiency shortfall prompted three studies to recommend the creation of a specialty expeditionary warfare career path that would encompass and promote the critical skills needed for these types of missions.[221]

The Navy does not have the proficiency and skills required to employ the law enforcement TTPs effectively. As law enforcement, it is not a Navy mission; it was reasonable for the Navy to assume it did not originally need to create those skills. But, the changing nature of the maritime domain places the Navy directly into law enforcement roles. Therefore, it is essential to embrace law enforcement TTPs in order to improve maritime security operations. The Navy's current DOTMLPF framework further hinders development of the proficiency skills needed. The Navy is attempting to address some DOTMPLF issues with respect to maritime security, but none of the initiatives are incorporating law enforcement in the solution.[222]

3. Capacity

Maritime security threats, such as transnational crime, terrorism, and illegal fishing, are considered low-end threats. In MSO, capacity is a critical factor to defeat low-end/high probability threats, as compared to traditional war, where capability is more important to defeat high-end/high-consequence threats. Low-end threats (fishing/cargo vessels, small boats, and small arms) are relatively inexpensive (compared to warships) and simplistic, therefore increasing the likelihood and quantity of occurrence. The larger number of threats requires greater capacity numbers to defeat it. Figure 2 illustrates this point.

Even though capacity is the most important factor in dealing with maritime security threats, maritime LE platform capacity (and the funding to support it) is also the chief gap in maritime security. Navies and Coast Guards are expensive because they are

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221 NWDC, *Confronting Irregular Challenges in the Maritime Environment*, 56; DellaVolpe, et al., *Irregular Challenges 2010 Game*, 27–29; Benedict, et al., *Confronting Irregular Challenges (CIC) Study Results*, 52.

222 Some of these actions include the creation of the Navy Irregular Warfare Office, promulgation of *The Navy's Vision for Confronting Irregular Challenges*, and *The Navy's Vision for Confronting Irregular Challenges: Implementation Planning Guidance*.

material intensive and require specialized platforms and skills in order to operate on the maritime domain.[223] Their relative expense has decreased their numbers (capacity). Because of the expense and subsequent smaller capacities of naval vessels in most countries, most navies and coast guards are combined in order to maximize capacity and capability.[224] Nevertheless, there are simply not enough law enforcement platforms to adequately cover the maritime domain where maritime security threats can operate. Since resource capacity presents a generic gap every agency and nation faces, it will be understood as a consistent challenge in this discussion of capacity shortfalls.

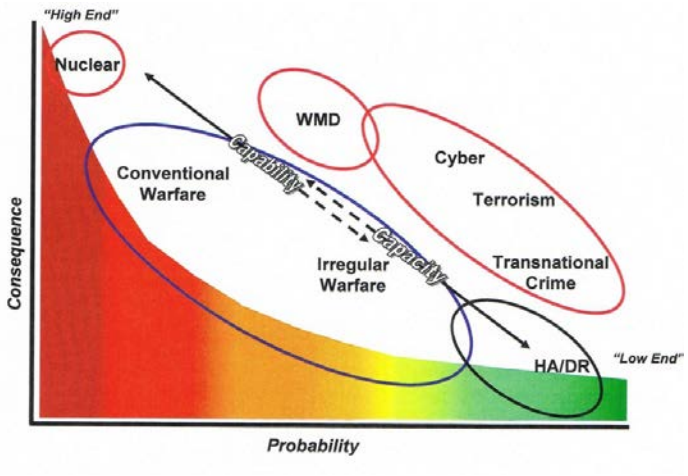

Figure 2. Spectrum of Conflict, Crime, and Crises[225]

This section will cover important capacity gaps that effect either Navy MSO and/or general maritime security.

a. General MSO Capacity Shortfall

The issues affecting general MSO means the issues are applicable to maritime security to the entire maritime domain, whether in the homeland or overseas.

223 Till, *Seapower*, 120–121.

224 Ibid., 345.

225 Wayne Porter and Mark Mykleby, *White Paper:A Vision for Building Sustainable Strength and Credible Influence in the 21st Century (Predecisional Draft)*, January 2011.

There are two problems affecting LE restrictions: First, the Navy's LE restrictions intensify the existing capacity shortfall. Second, there is not enough interagency LE capacity to support Navy MSO.

The first capacity shortfall is that the Navy's LE restrictions intensify the existing capacity shortfall. While the naval capacity gap is a generic problem, the United States has a different capacity gap that is alterable. The U.S. naval division of labor, which divides the naval services into military (Navy and Marine Corps) and maritime law enforcement (Coast Guard), creates an artificial maritime LE capacity gap. The Navy has a large quantity of ships (high capacity), but cannot employ them to fully and legally confront a majority of maritime security threats, because the Navy is restricted from conducting maritime LE (Figure 1). As such, the difference between the Navy's capacity and the entire U.S. Naval capacity is defined as the maritime security capacity gap. By expanding the Navy's law enforcement authorities and capabilities, it can close that capacity gap.

How can the Navy affect the overall maritime security capacity gaps? If numbers count, then the Navy's relatively large size could greatly increase the capacity for both homeland defense and the entire maritime global domain. An average of 55 percent of the U.S. Navy's 285 battle force ships is underway or deployed on any given day, making them potentially available to conduct MSO and/or presence operations.[226] About three-quarters of the average total are forward-deployed in support of operations abroad.[227] If these ships were law enforcement capable, the U.S. contribution to global maritime law enforcement capacity would increase by approximately 200 percent.[228]

The second shortfall is there is not enough interagency LE capacity to support Navy MSO. Since the Navy does not have LE capabilities and authorities, the U.S. attempts to cover the maritime capacity gap by utilizing interagency LE support for

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226 *A Day Without Seapower and Projection Forces*, 12.

227 U.S. Navy, "Status of the Navy," January 4, 2012, http://www.navy.mil/navydata/navy_legacy_hr.asp?id=146.

228 Adding the 65 percent of Navy's 285 battle force ships underway to the Coast Guard's 80 full ocean vessels will increase by 230 percent.

them. The Coast Guard and NCIS are the primary agencies that provide direct LE support to the Navy. The limited capacity of both agencies is insufficient to fully cover Navy assets potentially involved in maritime security. This problem affects the Navy for both the homeland and overseas maritime security operations. The next few paragraphs will look at the capacity of Law Enforcement Detachments (the primary Coast Guard support units to Navy vessels) and NCIS's deployable Special Agents to supply Navy assets with LE authorities.

The LEDET program is the main interagency support mechanism by which the Coast Guard supplies the Navy. The entire LEDETs program consists of 18 teams with 12 personnel each.[229] Splitting the teams is common to provide coverage for more ships.[230] The designed operational employment time of those teams is 120 days a year, but due to high demand, deployment days can average 205 to 210 days per year.[231] Even with extended deployment times and training, crew fatigue, and refit requirements mean only half of those teams are available at any time to support operations worldwide. Currently, the Coast Guard provides 7.5 teams to support operations in different areas of operation (two teams for USCENTCOM and five and one half teams for USSOUTHCOM).[232] This means that even split, LEDETs can only provide a coverage rate of roughly 10 percent for the average number of Navy Battle Force Ships underway or forward deployed.[233] Seven and a half teams are not enough to cover the demands from other combatant commanders. AFRICOM, EUCOM, and PACOM each require an additional two LEDETs (for six total extra teams) to support operations in their AORs,

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229 There are currently 17 teams, but some personnel from the reduction of seven MSSTs will be used to create one additional team and expand existing detachments from 11 to 12 personnel. GAO, *Coast Guard: Deployable Operations Group Achieving Organizational Benefits, but Challenges Remain*, (2010), 17, http://www.gao.gov/assets/100/96651.pdf.

230 A typical LEDET is 5–6 personnel deployed a ship. Michael Shelton, "The Forward Edge of Drug Interdiction: LEDETs Extend the Long Arm of Maritime Law Enforcement," *Navy League*, (September 2001), http://www.navyleague.org/sea_power/sep_01_14.php.

231 Ibid.

232 *Naval Operations Concept 2010*, 101.

233 Based on the average of approximately 50% of Navy's 285 Battle Force Ships underway or deployed. *A Day Without Seapower and Projection Forces*, 12.

but they rarely get them.[234] This helps highlight the importance of the maritime security mission in the different AORs and the needs for proper authorities, skills, and capabilities to support MSO. That is nearly double the current amount available.

The Coast Guard provides more support than just LEDETs for Navy operations. For example, The Navy has a limited inventory of patrol craft, which forces the Navy to utilize the Coast Guard's small boats and cutters in overseas maritime security missions. Patrol craft are critical to maritime security missions, such as infrastructure defense, high value asset escorting, and other near-shore operations that large combatants cannot do.[235] This capacity gap also applies to TSC missions where Coast Guard platforms are more appropriate for most partner nations' naval services.[236] In 2010, the Coast Guard continued the deployment of six patrol boats, port security units, LEDETs and their supporting and command elements to CENTCOM. It deployed cutters to Asia, the Middle East, and Africa to support partner capacity building programs and maritime exercises. In all, it delivered maritime capacity-building assistance to 51 nations, and training to 2,503 host country participants.[237] Budget cuts threaten to reduce Coast Guard support for overseas assistance and TSC.[238] If the Navy was to lose the support of the Coast Guard's small cutters for maintenance or budget reasons, the Navy simply does not have enough patrol boats to cover them.[239] Loss of the Coast Guard's six patrol boats would reduce Navy's patrol boat presence by 54 percent.[240] It will take the Navy's entire remaining patrol boat inventory to make up for the redistribution of Coast

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234 Ibid.

235 Mike Levine, "As Tensions with Iran Rise, US Coast Guard Makes Waves in Persian Gulf," *Fox News*, February 13, 2012, http://www.foxnews.com/politics/2012/02/13/as-tensions-with-iran-rise-us-coast-guard-makes-waves-in-persian-gulf/#ixzz1mOrzHKIu.

236 Most partners require low-end capabilities and smaller size to handle constabulary missions, which Coast Guard vessels are designed primarily for low-end threats and constabulary roles. Robert W. Button, et al., *Small Ships in Theater Security Cooperation* (Santa Monica, CA: RAND), 31–32.

237 *United States Coast Guard 2011 Posture Statement*, 19–20.

238 Coast Guard Official, in discussion with author, Washington, DC, December 6, 2011.

239 Actual patrol boat requirements are classified.

240 Current Navy and Coast Guard patrol boat inventory is 11 vessels. *United States Coast Guard 2011 Posture Statement*, 19; U.S. Navy, "Patrol Coastal Ships – PC," *Fact File*, November 10, 2011, http://www.navy.mil/navydata/fact_display.asp?cid=4200&tid=2000&ct=4.

Guard assets.[241] The loss of the Coast Guard's unique capabilities and capacity will prove a blow to the Navy's overseas maritime security efforts. Without expanding the capacity of Coast Guard forces, the Navy will need to determine a new way to replace the Coast Guard's support.

Since NCIS also provides support to Navy in law enforcement roles, what capacity does it have to support the Navy? Usually, NCIS assigns one agent to every aircraft carrier and "big-deck" amphibious vessel,[242] which can potentially provide coverage for entire battle groups attached to large deck vessels. Attached Special Agents, if leveraged smartly, potentially provide coverage over a sizeable percentage of deployed ships. NCIS can also expand support to security hotspots by deploying additional agents. Three things can negate this effect: First, it is common for ships to operate outside the immediate vicinity of the large deck vessels carrying NCIS agents, so extensive logistical support may be needed to move agents between ships. Second, beforehand knowledge of a potential operation is needed to ensure a Special Agent on scene prior to execution. This precludes the agent from use in emergent scenarios. Third, the NCIS agents primary responsibility is internal criminal investigations and counter-intelligence, so directly supporting MSO missions may unduly detract from their primary responsibilities.

The capacity to deploy agents to specially support emergent maritime law enforcement scenarios is also severely limited. For instance, NCIS's "surge" of specially deployed agents to support anti-piracy operations consists of one ship-rider and one land-based agent at Navy Forces Central Command in the 5th Fleet area of responsibility.[243] Ironically, expanded NCIS support is specifically covering one of the few maritime security missions where the Navy does not need expanded legal authorities. The intent of NCIS support must be to leverage its investigative expertise due to the criminal nature of these cases. This means one agent is available for the four to eight Navy ships that

241 Ibid.

242 NCIS, "Frequently Asked Questions (FAQs)."

243 John Wagner, in discussion with author.

conduct counter-piracy operations on a daily basis,[244] further showing the limitation of NCIS capacity to cover the gap law enforcement authorities. Further surging special agents for ship-rider deployments would negatively affect NCIS operations.

b. Homeland MSO Capacity Shortfall

Having the capacity to conduct direct operations is imperative to achieving maritime homeland security. As the *National Strategy for Maritime Security* states,

> The United States must… patrol, monitor, and exert unambiguous control over its maritime borders and maritime approaches. At-sea presence reassures U.S. citizens, deters adversaries and lawbreakers, provides better mobile surveillance coverage, adds to warning time, allows seizing the initiative to influence events at a distance, and facilitates the capability to surprise and engage adversaries well before they can cause harm to the United States.[245]

Since the Navy's role is severely limited in maritime homeland security, due to legal authorities and capabilities, the Coast Guard (as lead agent and only naval service able to legally conduct homeland MSO) and its capacity gap or shortfall becomes the focus of this section. Understanding any Coast Guard capacity shortfall is important because it reduces the effectiveness of homeland MSO and highlights areas where the Navy large ship capacity can be used to potentially reduce those gaps. For example, in FY 2009 warships utilizing LEDETs accounted for over 50 percent of cocaine interdictions for that year.[246] Mass migration events quickly overwhelm Coast Guard capacity, requiring Navy vessels to support migration interdictions.[247] In the immediate aftermath of 9/11, the Navy surged ships to provide security and defense of critical areas on the East and West Coasts.[248] The point is to show the value of the Navy's capacity in terms of providing maritime governance for the homeland.

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244 Pendleton and Caldewell, *Maritime Security*, 19.

245 *National Strategy for Maritime Security*, 9.

246 *United States Coast Guard's Fiscal Year 2009 Performance Report*, 21.

247 Robert Watts, "Caribbean Maritime Migration: Challenges for the New Millennium," *Homeland Security Affairs*, Supplement no. 2 (2008), 4, http://www.hsaj.org/?special:fullarticle=supplement.2.6.

248 Henry H. Gaffeney, "The Navy Before and After September 11," in *Globalization and Maritime Power*, ed. Sam Tangredi (Washington, DC: National Defense University Press, 2002), 538.

The first homeland capacity shortfall is that the Coast Guard's capacity is too small to homeland MSO requirements. Deservingly, the Coast Guard has long touted its unofficial motto "doing more with less," referring to the Coast Guard's small size and its large mission set. [249] Despite "doing more with less," the U.S. Coast Guard's capacity is insufficient to meet all of its routine security obligations. A study conducted at the Naval Postgraduate School determined that the lack of maritime enforcement capacity is a major factor in the vulnerability of the U.S. west coast ports.[250] The study models various scenarios where intelligence is received that an unidentified vessel possesses a kinetic risk to a major port with 96 hours advance notice. The study's analysis highlighted the current and even future projected availability of assets and boarding teams as too little to effectively identify and stop the threat.[251] Another study evaluating the Coast Guard's force structure, conducted by RAND Corp., concurs, concluding that the Coast Guard's current and projected assets are only half of what is required to satisfy its "routine" missions.[252] The inability for the Coast Guard to meet all of its homeland security requirements, due to limited capacity, creates vulnerability in America's waters and its approaches.

The second homeland capacity shortfall is that the Coast Guard has a limited amount of ships with offshore capability. Geographical distances play an important part in the Coast Guard's capability to conduct maritime security missions. Designed as primarily a coastal force, its capacity dramatically decreases the further the distance away from the U.S. coastline.[253] If the United States' goal is to confront threats

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249 Korb, Duggan, and Conley, *Building a U.S. Coast Guard for the 21st Century*, 7.

250 Brett C. LeFever, "Evalutation of the Maritime Operational Threat Response Forces for the Pacific Coast Theater" (master's thesis, Naval Postgraduate School, 2009).

251 Ibid., 75–76.

252 Birkler, et al., *The U.S. Coast Guard's Deepwater Force Modernization Plan: Can It Be Accelerated?Will It Meet Changing Security Needs?*(Santa Monica, CA: RAND, 2004). The study reviews the Deepwater Program and independently verifies the results of two previous CNA studies. All three studies concur the Coast Guard's force structure is not sufficient in meeting its maritime security needs.

253 The Coast Guard's Deepwater Recapitalization Program intends to expand its deepwater capability by replacing older vessels with new and more capable cutters, boats, and aircraft. *United States Coast Guard 2011 Posture Statement*, 38.

as far from the homeland as possible,[254] a smaller law enforcement capacity has negative implications in the ability to address those threats. Within U.S. territorial waters (twelve nautical miles (nm)), the Coast Guard has roughly 2,100 cutters and boats that can potentially respond to threats.[255] By 200 nm, (the limit of the U.S. Economic Exclusive Zone), that number decreases to 250 vessels. That translates to one LE capable vessel for every 14,000 sq. nm of the U.S. EEZ.[256] The Coast Guard operates approximately eighty vessels (including thirty buoy tenders and four icebreakers that do not normally function as security assets) capable of effectively operating long distances off the U.S. Coast.

To help conceptualize the time and distance versus capacity problem, a U.S. bound vessel over 300 tons coming from overseas must submit a Notice of Arrival (NOA) at least 96 hours prior to arrival in U.S. waters.[257] Vessels smaller than 300 tons (including recreational boats and other small craft) are not required to submit a NOA. With the rare exception of prior intelligence, a NOA provides the Coast Guard with the first "awareness" of the arriving vessel. Depending on the vessel's speed, this initial awareness could be as far as 1900 nm away.[258] At this distance, few Coast Guard assets are available to track and, if necessary, interdict the vessel in an attempt to address a potential threat as far from the homeland as possible. If the vessel arrives in the U.S. EEZ, it can reach the U.S. coastline in as little as 10 hours.[259] Within the EEZ, the Coast Guard has more assets (still one asset for every 14,000 sq. nm) able to track and interdict a suspect vessel, but the available time to interdict (from 96 hours to 10 hours) is significantly reduced. At the territorial seas mark, the Coast Guard may have less than 45 minutes to react before a threat reaches the U.S. coastline. Now consider the 1,200 to

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254 *National Strategy for Maritime Security*, 9.

255 U.S. Coast Guard, "U.S. Coast Guard: America's Maritime Guardian Brief," (n.d.), 24 www.uscg.mil/international/docs/CG-101.pdf. That number only reflects the potential maximum capacity, these figures would actually fluctuate operationally due to assets capability limitations and maintenance schedules.

256 The U.S. EEZ is approximately 3.4 million square miles.

257 Notification of Arrival, Hazardous Conditions, and Certain Dangerous Cargos, 33 CFR 160.201–215 (2003), http://edocket.access.gpo.gov/cfr_2005/julqtr/pdf/33cfr160.201.pdf.

258 Based on an average speed of a vessel traveling 20 knots for 96hrs.

259 Ibid.

1,500 commercial vessels calling on American ports daily.[260] This exacerbates the challenges of response time and distance to enforce laws on the seas. Since it better to confront maritime security threats as far from the coast as possible, the Coast Guard limited vessel capacity, especially for threats immediately offshore, is constrained to address time and distance problems adequately.

The third homeland capacity shortfall is that material, budget, and mission load issues threaten the Coast Guard's capacity. Outside of a "routine" capacity gap, other challenges threaten to further impact Coast Guard capacity. These include an aging fleet, impending budget reductions, and significant events and disasters. A recent GAO report highlights the expected reduction in mission performance in security operations as a trade-off required to balance resources between security and non-security missions.[261] The fleet's material condition directly attributes to the low performance in the defense readiness mission in support of COCOMs requirements.[262] The Coast Guard plans "to cut about 1,000 personnel in fiscal [year] 2013, as well as decommission high-endurance cutters and patrol boats, in the face of tighter budgets." [263] DHS Inspector General's performance reports from years with significant events, like the Haiti disaster relief and Horizon oil spill negatively impacted performance in other maritime security areas increasing the vulnerability of the U.S.[264] The changing security environment will only continue to exacerbate the shortfall in capacity. To address the effects of capacity reductions on its mission performance, the Coast Guard is lowering performance target

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260 Victor E Renuart and Dane S. Egli, "CLOSING THE CAPABILITYGAP: Developing New Solutions to Counter Maritime Threats," *Naval War College Review* 61, no. 2, 14-24, http://search.proquest.com/docview/205941831?accountid=12702.

261 The report reflects the expected impact to operations decommissioning of 5 High Endurance Cutters, 9 aircraft, and 5 MSSTs. GAO, *Observations on the Requested Fiscal Year 2011 Budget, Past Performance, and Current Challenges*, 7.

262 The report reflects the expected impact to operations decommissioning of 5 High Endurance Cutters, 9 aircraft, and 5 MSSTs. GAO, *Observations on the Requested Fiscal Year 2011 Budget, Past Performance, and Current Challenges*, 11.

263 John C. Marcario, "Coast Guard To Cut Some Personnel to Pay for New Assets" *Seapower* http://www.seapowermagazine.org/stories/20120223-papp.html.

264 DHS Office of Inspector General, *Annual Review of the United States Coast Guard's Mission Performance (FY 2010)*, 3

goals for the next fiscal year.[265] These problems have started discussions amongst Coast Guard leadership in scaling back current overseas support operations as a trade-off to bolster its operational capacity issues in the homeland.[266] If the Coast Guard does reduce current support for DoD operations, it will increase the capacity gap in the interagency support to the Navy and potentially generate greater threats originating from overseas.

c. Overseas MSO Capacity Gaps

The unique capacity gap overseas is the need for the Navy to supply critical maritime leadership and naval capacity to overseas maritime security operations. Restricted LE roles reduce the value of the Navy performing these roles, despite the importance of maritime security to partner nations. Since only a small fraction of the Coast Guard's ocean-going vessels regularly operates outside the immediate vicinity of the United States,[267] the Coast Guard is unable to fill the Navy's place in supporting LE efforts abroad.

The overseas capacity shortfall is that the Navy cannot employ its ships in law enforcement roles, despite the large participation in international MSO. The Navy's forward presence plays an important role in providing stability, security, and freedom of the seas. As *NOC 2010* states, "The forward presence of naval forces serves to contain and deter regional adversaries while increasing the engagement opportunities with allies and partners to promote collective security, enhance global stability and confront irregular challenges."[268] Some activities include maritime interception operations in support of UN Security Resolutions (UNSRs), where U.S. assets comprised the largest and sustained capacity to enforce sanctions. Imposing the UN sanctioned Iraq Oil Embargo in the Persian Gulf from 1990–2003 provides an excellent historical

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265 Korb, Duggan, and Conley, *Building a U.S. Coast Guard for the 21st Century*, 8.

266 Michael Kitchman, in phone discussion with author, Monterey, CA, December 1, 2011. Michael Kitchman is a senior Coast Guard analyst in the Coast Guard Counter-terrorism office (CG52) at the Coast Guard Headquarters, Washington, DC.

267 These numbers represent only the based on capacity and not operational realities such as material condition, readiness, and function. It is only intended to illustrate the idea of distance and capacity. Coast Guard Cutter, Boat, and Aircraft Chart.

268 *Naval Operations Concept 2010*, 27.

example.[269] Maritime security operations outside of UN mandates also exist. Combined U.S. and Indian Navy anti-piracy and terrorism suppression patrols in the Malacca Strait,[270] and the ongoing U.S.-led Combined Maritime Forces patrols supporting MSO in Middle Eastern waters and the Indian Ocean provide other examples.

The U.S. Navy also leads other programs that promote security and stability, such as Theater Security Cooperation, Maritime Security Force Assistance (MSFA), and global maritime partnership (GMP) engagement missions.[271] In 2009, the USS Crommlein combined its transit across the Pacific, embarking Coast Guard personnel, to go through U.S. and regional partner EEZs in Oceania to provide counter-illegal, unreported, and unregulated (IUU) fishing patrols. The small island nations, most of whom have severely limited patrol boat capacity to cover their large EEZs,[272] welcomed the combined Navy patrol. It went a long way in showing U.S. commitment to its presence and upholding maritime law.[273] As the Naval War College's Irregular Challenges Game 2010 states, "the Navy may be better suited to overcome the barriers to interdicting and engaging in order to confront irregular challenges before they escalate to crisis since the Navy is forward-deployed and maintains presence on a persistent basis to preempt a crisis or set conditions to effectively react."[274] The ability to harness the Navy's capacity against the entire spectrum of maritime threats across the maritime domain plays an important role in enabling global stability and security. Global stability and security, in turn create stability and security for the United States.

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269 Adam Seigel, "Historical Precedents for Naval Involvement in Peace Support Operations and Multinational SSTR Operations, 1890-2001" in. *Naval Peacekeeping and Humanitarian Operations: Stability from the Sea*, eds. James J. Wirtz and Jeffrey Arthur Larsen (Abingdon, Oxon: Routledge, 2009), 182.

270 Ibid., 183.

271 *Naval Operations Concept 2010*, 31, 38.

272 For instance, the Republic of the Marshall Islands has one patrol boat, the Federated States of Micronesia has three boats, and Palau has one boat. Most of these aging vessels are frequently inoperative due to repair issues and/or lack of crew, parts, or fuel. Norris, "Bilateral Agreements: They're Not Just for Drugs Anymore," 72.

273 Michael De Nyse, "U.S. Coast Guard, Navy Partner to 'Fight for Fish'," *Hawaii Navy News* http://www.cnic.navy.mil/navycni/groups/public/@pub/@hawaii/documents/image/cnicp_a135855.pdf.

274 David DellaVolpe, et al, *Irregular Challenges 2010 Game Report*, 25.

C. INDIRECT APPROACH OPERATIONS

Indirect approach operations are operations that do not directly attempt to confront threats. Instead, indirect operations either improve direct operations, and/or they can take measures to reduce the threat burden. Two good examples of indirect approach operations are maritime domain awareness (MDA)/intelligence and theater security cooperation (TSC). MDA is extremely important because it helps maritime security by "preventing crimes before they occur and allocating law enforcement resources more deliberately and effectively."[275] Since there is sufficient literature that covers the problems associated with information sharing between military and law enforcement organizations, this part of the chapter will only cover TSC by indentifying and analyzing the capacity, capability, and authority gaps with respect to law enforcement roles.

1. Theater Security Cooperation

The Navy's key strategy to defeat maritime challenges is TSC with international partners.[276] These partners will, in turn, prevent the spread of terrorism, insurgencies, and criminal activities from their origins. Despite the TSC's goal of building partner capacity, the Navy's approach to TSC is mismatched to its goal. The Navy's approach fosters diplomatic access and coalition building, rather than building partner capacity. Most nations that participate in TSC focus exclusively on building constabulary capacity for its roles (Figure 3). The Navy's different focus from partner nations is directly attributable to its capacity, capability and authority gaps in TSC.

a. Capacity

The capacity gap for the Navy in TSC is the lack of specialized forces with maritime security expertise. In the Naval Warfare Development Center's CIC study, NECC units were closer in providing relevant maritime security expertise, but their small size formed a capacity shortfall to overcome the Navy's general lack of expertise.[277]

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275 Randall, "Ready for the Future?," 11.

276 *The Navy's Vision for Confronting Irregular Challenges*, 3.

277 NWDC, *Confronting Irregular Challenges in the Maritime Environment*, 54.

NECC's maritime security capable units consist of approximately 8,000 personnel supporting both fleet operations and security training.[278] Only 300 personnel support Maritime Civil Affairs and Security Training (MCAST) teams, who have the primary responsibility of training partner nations in maritime security.[279] NECC's limited capacity is in further danger of reductions with pending budget cuts. Most of NECC's funding comes from Overseas Contingency Operations (OCO) funds in support of OEF and OIF.[280] When those contingency operations are completed, it is unlikely the extra funding will be available to continue supporting the current size and operations of the NECC.

278 NECC, "NECC Fact Sheets," (n.d.), http://www.necc.navy.mil/.

279 Maritime Civil Affairs and Security Training (MCAST) Command, "Frequently Asked Questions," (n.d.), 1–2, http://www.public.navy.mil/necc/mcast/Documents/MCAST%20FAQ.pdf.

280 DoN, *Highlights of the Department of the Navy FY 2012 Budget* (Washington, DC: DoN Office of Budget, 2011), 4–15, http://www.finance.hq.navy.mil/FMB/12pres/Highlights_book.pdf.

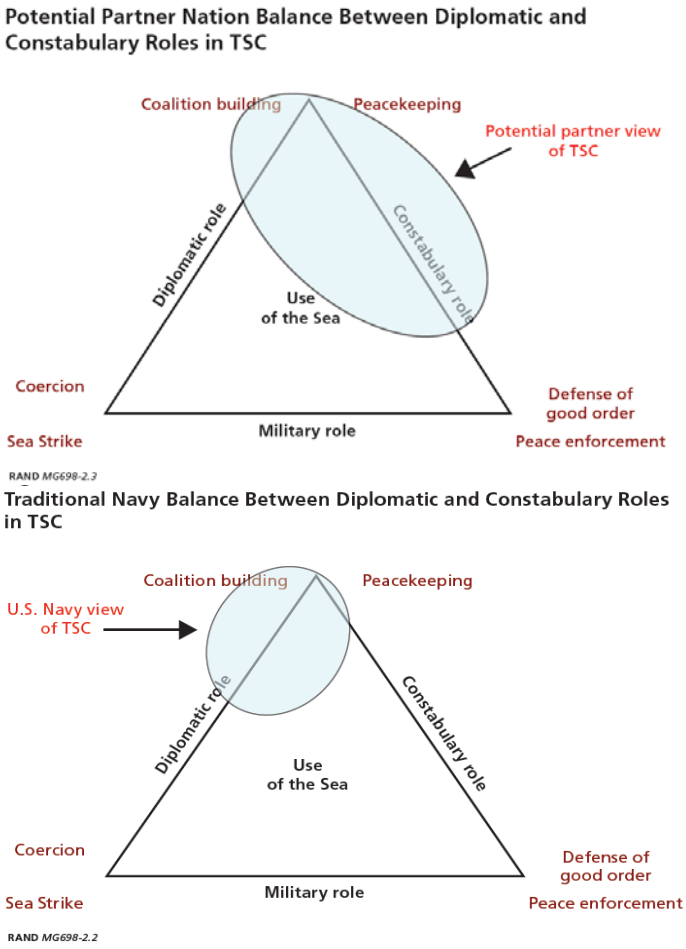

Figure 3. U.S. Navy and Potential Partner Views for the Purpose of TSC[281]

b. Capability

Related to NECC capacity, the Navy's traditional capabilities offer little to most recipients of TSC. The Navy is seldom directly involved in constabulary duties, such as fishery enforcement, counter-trafficking, and pollution control. In addition to the roles, most Navy assets are high-end platforms that possess exceptional technology and equipment that are beyond the purchasing capability of most TSC nations. Coast Guard officials also expressed concern about the knowledge and expertise of the Navy units

[281] Robert W. Button, et al., *Small Ships in Theater Security Cooperation*, 15–16.

performing law enforcement training for Africa Partnership Station visits.[282] Capabilities that cannot be used against to address partner challenges will be discounted.[283] When looking at the makeup of the Maritime Civil Affairs and Security Training (MCAST) team who are responsible for training partner nations on "port operations, harbor and channel maintenance and construction, marine and fishery resources, international law (admiralty) and public health"[284] the bulk of the Maritime Civil Affairs teams consist of "active duty and reserve Sailors from the construction force ratings… as well as boatswain's mates (BM), hospital corpsmen (HM), information technology specialists (IT) and electronic technicians (ET)."[285] These Navy ratings clearly do not coincide with civil maritime functions. Since the Navy does not conduct these missions, it is difficult to argue that the Navy can provide functional expertise to civil maritime areas decreasing the effectiveness of TSC.

The Navy has admitted some of those concerns by embarking interagency and international officials to help cover some of the expertise and legal gaps.[286] Without the practical constabulary experience and equipment, the Navy provides only limited value to TSC. In most cases, the ship crews can only instruct on basic skills, like maintenance, damage control, and seamanship.[287] Some countries, like Ghana, require only basic training because they do not have naval forces that get underway regularly. Other countries, like Nigeria, have basic seamanship and equipment competency but

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282 GAO, *Defense Management: Improved Planning, Training, and Interagency Collaboration Could Strengthen DoD's Efforts in Africa*, 35–36.

283 Edward A. Smith Jr., "From Effects-Based Operations to Effects-Based Deterrence: Military Planning and Concept Development," in *Globalization and Maritime Power*, ed. Sam Tangredi (Washington, DC: National Defense University Press, 2002), 331.

284 MCAST Command, "Frequently Asked Questions," 2.

285 Ibid.

286 U.S. Southern Command, "Southern Partnership Station 2012," (n.d.), http://www.southcom.mil/newsroom/Pages/Southern-Partnership-Station-2012.aspx; Martine Cuaron, "Gunston Hall Arrives in Rota to Prepare for Africa Partnership Station Mission," *Navy News*, February 22, 2010, http://www.navy.mil/search/display.asp?story_id=51433.

287 John Stratton, "Africa Partnership Station USS Gunston Hall Arrives in Ghana," *U.S. Africa Command*, March 11, 2010, http://www.africom.mil/getArticle.asp?art=4150&lang=0.

require maritime security skills training.[288] A Coast Guard crew can provide skills training for the both countries, but Navy can only provide for the former.

c. Authority

An advantage maritime law enforcement entities have is the "white hull" vessel access that most Navy "gray hulls" do not. A negative perception of the military compared to law enforcement is the suspected culprit.[289] The reasons for the Navy's exclusion are discussed further in the next chapter. The Coast Guard has leveraged its law enforcement authorities in order to actively partner with many nations including, Canada, Japan, the Republic of Korea, and the Russian Federation to improve "multilateral maritime security and increase cooperation in enforcing fisheries treaties, combating illegal drug trafficking and illegal migration."[290] The Coast Guard also is working with the People's Republic of China for a variety of maritime security issues.[291] For the U.S. Navy, these types of exchanges with China are minimal. The preponderance law enforcement bilateral agreements in Latin America also provide evidence of the Coast Guard's LE access. Perhaps the Navy, by approaching partner countries and regions from a law enforcement posture, can create greater opportunities for access and cooperation.[292] For example, the LEDET program has allowed the Navy direct access and participation in regionally sensitive areas through law enforcement bilateral/multilateral agreements. If

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288 Vogel, *Navies Versus Coast Guards Defining the Roles of African Maritime Security Forces*, 4–6.

289 James J. Tritten, "Implications for Multinational Naval Doctrine," in *Globalization and Maritime Power*, ed. Sam Tangredi (Washington, DC: National Defense University Press, 2002), 268.

290 Bruce Stubbs, "Making the 1,000-Ship Navy a Reality," *Proceedings* 133, no.1 (January 2007), 60–65, http://search.proquest.com/docview/205985403?accountid=12702.

291 Hong Jiang "China's Strategic Presence in Southeast Asian region," in *Maritime Capacity Building in the Asia Pacific Region*, ed. Andrew Forbes (Canberra: Sea Power Centre-Australia, Department of Defence, 2010), 149; U.S. Coast Guard, "Chinese Law Enforcement Officer Interdict 28 Illegal Fishermen on High Seas," *Office of Public Affairs*, October 26, 2008, http://www.d17.uscgnews.com/go/doc/780/236101/&printerfriendly=1.

292 There are many instances in which U.S. Navy vessels and crews are used to support law enforcement purposes for the U.S. and foreign partners. This leads to the conclusion that it is not the physical "intimidation" of Navy that creates the negative perception for use in law enforcement.

sizeable portions of our partners are willing to allow access to Navy forces, acting in a law enforcement capacity, it can prove beneficial to the maritime security operations and TSC.

The Navy plays an integral role in providing MSO abroad. Maritime security is the most important consideration for the majority of the world's navies. If the U.S. Navy wants to be recognized as a significant partner by these navies, it must continue to participate in maritime security activities, and it needs to be enabled to conduct law enforcement in order to participate effectively in maritime security activities with partner navies.

D. CONCLUSION

1. Direct Approach

Directly enforcing maritime security requires authorities, capabilities, and capacities. Since law enforcement is the best method to counter the criminal nature of maritime security threats, having the right LE authorities and capabilities, as well as the capacity to employ them, is important to conduct maritime security well. Any gap, shortfall, and/or deficiency in those requirements is considered a vulnerability in maritime security. There are several vulnerabilities in maritime security directly attributable to the Navy's limited law enforcement capabilities and authorities. Since the Navy has limited law enforcement authorities and capabilities, it cannot effectively employ its capacity to reduce the maritime security threat.

a. Authority

The Navy's actual and perceived legal and policy restrictions (limited authority) negatively affect what maritime security threats it can confront and how it can confront them. The Navy's current authorities allow it to challenge only a small percentage of maritime security threats without the help of other law enforcement agencies. Even if the Navy has the authority to disrupt/stop a threat, with very few exceptions, its limited legal authorities constrain desirable outcomes (prosecution of

offenders). The ability to punish criminals through prosecution has proven to improve MSO by obtaining intelligence for follow-on operations and creating deterrence for maritime criminal activities.

The maritime legal regime and military policies create complicated and contradictory rules that can affect the decision-making process for the Navy. It can create the perception that commanders may not have the authorities they actually do, creating risk aversion to employing military units in fear of the legal ramifications. Expanding legal authorities will help alleviate the risk aversion due to legal ramifications and reduce the angst caused by the complex legal system. At the same time, it will grow awareness for the different needs between combat and peace/law enforcement missions, including the use of force, making the Navy adept to the varying needs of the security environment.

b. Capability

The Navy's largest deficiency in maritime security is the limited training and expertise of its members (limited capability) in maritime law enforcement. Since the Navy rarely conducted law enforcement missions, it had no need to develop those capabilities. Consequently, it has negatively impacted the Navy's increasing involvement in MSO. The Navy is slowly recognizing the need to improve its maritime security capabilities, but none of those improvements includes espousal of law enforcement skills. In addition, the Navy's current DOTMLPF framework is also prohibiting improvement in its maritime security proficiency. Without accepting the need for law enforcement skill and the subsequent changes to its organizations, the Navy will continue to conduct MSO inefficiently.

c. Capacity

The most significant and common gap in maritime security is having enough capacity to adequately protect the maritime domain. It affects most navies/coastguards overseas, as well as the Coast Guard for the U.S. homeland, creating a significant vulnerability in maritime security. The Navy's large number of ships (large capacity) cannot solve the maritime domain's maritime security capacity problem alone,

but through its global presence it can help to reduce the gap both at home and overseas. While the Navy has a large capacity of ships to conduct and support numerous maritime security operations, it cannot employ them efficiently to confront the full spectrum of maritime security threats, because of the limited training and expertise of its members (limited capability), and because of its perception of legal and policy restrictions (limited authority). Greater investment into law enforcement roles can help ameliorate the maritime security capacity gap. In order to help cover those deficiencies and shortfalls, the Navy relies on the interagency support from the Coast Guard and NCIS. The Coast Guard has essentially the opposite set of constraints than the Navy. Its members are highly trained in maritime security and law enforcement (high capability); and its legal authorities are extensive and clearly defined (broad authority), but it has only a few ships, especially those capable of operations abroad (limited capacity). Unfortunately, the limited capacity of those agencies is insufficient to cover the current the demand signal for their authorities and expertise, little lone to broadly cover the Navy.

2. Indirect Approach

a. Theater Security Cooperation

The Navy's gaps and deficiencies in authority and capability affect not only direct approach operations, but also TSC. The Navy's skills and equipment do not translate to most partners' needs. NECC, which has some relevant skills and capability, is too small to cover the breadth of the TSC program adequately. Since building partner capacity is the Navy's most important task to support maritime security, it is important to have the missions, skill sets, and equipment germane to potential partners.

As the only global Navy, the U.S. Navy inherited the international maritime system, which promotes trade, good order, and freedom of the seas. Protection of that system is beneficial for everyone, including the United States. Maritime security threats currently pose the greatest threat to the global maritime commons and are the leading concern to most maritime nations. Maritime law enforcement provides the best means to overcome those threats. For the Navy to be affective in MSO, act as a global

naval leader, and build partner naval capacity, embracing maritime law enforcement capabilities and authorities is vital. But, the Navy clearly has gaps and deficiencies in its authorities and capabilities, which in turn restricts its ability. In order for the Navy to take on greater law enforcement roles to help close those gaps, what is the cost (in terms of fiscal cost, traditional operations, and warfighting readiness) to close the those gaps, i.e., what is gained or lost? Is it worth it? The next chapter will attempt to answer those questions.

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V. CONCERNS ABOUT THE USE OF THE NAVY IN LAW ENFORCEMENT ROLES

A. INTRODUCTION

Chapter IV identified numerous problems in the Navy's capacity, capability, and authority for maritime security. This chapter assumes that Navy law enforcement roles can help overcome the gaps/shortfalls/deficiencies in maritime security identified in the last chapter. To reduce those problems through law enforcement roles ultimately requires dedicated resources (budget, personnel, training, equipment, and time). In a strained resource environment and with Navy's remaining traditional warfare focus,[293] the required resources for maritime security only creates greater resource competition between maritime security and traditional naval warfare, regardless if maritime security is one of the six strategic imperatives of the Navy's maritime strategy. Since any further commitment to maritime security will likely be contentious, it begs asking the fundamental question, is it ultimately worth it given the current state of the Navy? Accordingly, what are the concerns related to a larger Navy law enforcement focus in maritime security and are they warranted? This chapter will attempt to answer the latter questions.

This chapter will first briefly look at the current debate over the Navy conducting maritime security in order to identify the major concerns with expanded maritime security roles. The main portion of the chapter focuses on analyzing the concerns (in terms of fiscal costs, operational focus, and warfighting readiness), in order to determine the merit of those concerns, as they relate to the Navy's role in maritime law enforcement. Understanding the concerns over a greater maritime security role for the Navy and its effect on the Navy's core warfighting missions, in terms of budget, operations, and mission readiness, is integral to arguing the value in expanding law enforcement roles for the Navy.

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293 As Deputy Chief of Naval Operations (CNO) for Operations, Plans, and Strategy Vice Admiral Bruce Clingan recently testified, "The Navy will manage the risks of reduced resources by continuing to put our core warfighting responsibilities first." *A Day Without Seapower and Projection Forces*, 14.

B. DEBATE OVER COSTS

When the Navy began to increase its role in maritime security missions, a debate formed over the effects of using the Navy to conduct law enforcement or constabulary missions. One side argues the Navy should not act in a constabulary capacity out of concerns that maritime security missions are: too costly compared to the threat, increases the mission obligations of an already overburdened organization, detracts too much from traditional operations requirements, and reduces warfighting readiness. The opposite side argues military operations and warfighting readiness do not suffer from maritime security missions.

For those opposed to greater constabulary role, one of the concerns is that warfighting must be a priority. From a statutory perspective, the Navy is tasked to fight and win wars; anything else needs to be considered secondary, including maritime security.[294] This is especially true in austere times.[295] Some argue that traditional warfare and law enforcement skills are exclusive; therefore, they can only compete against each other in readiness and capability.[296] As an article from the Washington University Law Quarterly states, "This change of focus lessens the fighting edge of the military and dampens the "warrior spirit.""[297] Some argue that the Navy can do maritime law enforcement but cannot be expected to be an expert.[298] One of the DoD's main arguments against increasing support to law enforcement missions concerned the effect on operational readiness, leading to Title 10 USC § 376, which asserts, "Support… may not be provided to any civilian law enforcement official under this chapter if the provision of such support will adversely affect the military preparedness of the United

294 Thachuk and Tangredi, "Transnational Threats and Maritime Responses," 67.

295 *A Day Without Seapower and Projection Forces*, 14.

296 Thachuk and Tangredi, "Transnational Threats and Maritime Responses," 66.

297 Hammond, "The Posse Comitatus Act: A Principle in Need of Renewal."

298 Gray, "The Coast Guard and the Navy," 114.

States."[299] From a proportionality and fiscal cost perspective, it is argued that high-end cost and capabilities of traditional naval forces are too disproportionate to the low-end maritime security threats. As one article from U.S. Naval Institute's *Proceedings* claims, "It is nothing more than high-seas criminal activity, better addressed by law enforcement agencies than warships. As a localized nuisance, it should not serve to shape maritime force structure or strategy." [300] Using sophisticated and expensive warships is not sustainable for lesser tasks.[301] Lastly, opponents argue that the Navy is not a desirable entity for the criminal nature of maritime security threats due the "political "baggage" associated with the U.S. Navy"[302] as a tool of war, e.g., the difference between the "gray hull" and "white hull" perceptions.

The other school of thought argues maritime security missions are either beneficial or help sustain Navy forces. It is also debated whether the nature of the maritime security threat environment has changed and that traditional missions are no longer the number one strategic priority.[303] Therefore, it is acceptable to share or replace some traditional warfighting aspects of the Navy. Some contend that in the absence of major competitors, maritime security missions help readiness by helping to preserve force end strength and operational funding from typical peacetime cuts.[304] Others see that maritime security operations contribute to force readiness because these real-world

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299 There is much debate for the reason this clause exists. One reason is Congress wanted to make sure the military was not over-tasked in supporting LEAs. Another reason is that it placated the military and proponents, whose primary argument in opposition to the law was that supporting law enforcement agencies reduced the military's warfighting mission. In the end Congress did expand the ability for the military to support LEAs, even to the point that the military became the lead agency for detection and monitoring in counter-drug operations. Direct support to civil authorities is now an important mission for the military. 10 USC Chapter 18, 10 USC § 124; CJCS, Joint Publication 3-28: *Civil Support* (September 2007).

300 John Patch, "The Overstated Threat," 1.

301 Martin Murphy, "Suppression of Piracy and Maritime Terrorism," 37.

302 Tritten, "Implications for Multinational Naval Doctrine," 268.

303 Martin Murphy, "Suppression of Piracy and Maritime Terrorism," 30.

304 Rosenau, **"**Non-traditional Missions and the Future of the U.S. Military," 31–32.

operations utilize some of the same equipment and skills, like surveillance, reconnaissance, seamanship, and targeting skills as they would in traditional missions.[305]

Both sides of the debate offer sensible arguments, but in the end, the conclusions derived from the arguments are subjective and difficult to prove. What the debate does offer is a list of concerns that will help shape the costs and benefits analysis. Since the Navy's strategic focus remains on the ability to maintain warfighting capacity and capability, this chapter's cost/benefit arguments will concentrate on the concerns over law enforcements roles at the expense of the Navy traditional warfighting mission in terms of budget, operations and readiness.

C. OPERATIONAL CONCERNS

This section will cover several operational concerns from the Navy operating in a law enforcement capacity. The first concern is the Navy's OPTEMPO is already too high, and an increased role in maritime security will further strain the Navy's resources. This study argues that MSO does not necessarily increase the Navy's OPTEMPO, and by further streamlining current operations with MSO can increase effectiveness without excessive strain for the Navy. However, MSO does potentially generate a larger burden to individual units engaged in a maritime security missions. Another concern covered is that foreign partners negatively perceive the Navy for use in maritime law enforcement. This section argues there is a perception problem, but its extent and cause are undetermined. The evidence about the Navy's perception is mixed and inconclusive. The last operational concern is that expanding law enforcement authorities will create the potential for confusion between the Navy and other LEAs, chiefly the Coast Guard. It is also debated that the Navy's complementary force structure to the Coast Guard and existing process help mitigate confusion, and therefore, is not a large operational concern.

[305] Thachuk and Tangredi, "Transnational Threats and Maritime Responses," 67.

1. Concern: MSO Further Burdens the Navy's High Operations Tempo (OPTEMPO)

A major concern of maritime security operations is the chance they increase the Navy's already extensive mission load. The largest capacity issue the Navy faces is a high operations tempo (OPTEMPO) compared to its resources. The Navy is only able to meet an average of 59 percent of the Combatant Commander's requirements,[306] while platforms and crews suffer from fatigue and maintenance issues.[307] Adding specific maritime security missions potentially increases ship requirements because it is a capacity intensive mission area. Increased mission requirements will increase platform and crew fatigue. The only two possible solutions to decrease fatigue are either to increase asset capacity or decrease deployment frequency—but how does maritime security affect stretched resources?

a. MSO Does Not Necessarily Represent an Increase of in OPTEMPO

Participating in maritime security operations does not necessarily represent an increase of deployments specifically for maritime security. The reason increasing the authorities and capabilities do not necessarily increase deployments is that the Navy can and currently does operate in a dual role of traditional and maritime security operations. In most cases, the Navy conducts maritime security in conjunction with regularly scheduled deployments and/or operations. A recent article released by the USS John C. Stennis Carrier Strike Group (JCSCSG) Public Affairs highlights this dual role stating,

> JCSCSG will be joining USS George H.W. Bush Strike Group, already in the 5th Fleet AOR. An overlap of carrier deployments provides additional naval and air capabilities to conduct maritime security operations and

306 *A Day Without Seapower and Projection Forces,* 12.

307 Seth Cropsey, "The US Navy in Distress," *Strategic Analysis* 34, no. 1, 35.

> theater security cooperation engagements, as well as provide support to operations New Dawn and Enduring Freedom.[308]

If the Navy is not engaged in actual conflict, presence in order to prevent conflict becomes its strategic role. As stated in the U.S. naval strategy, preventing conflict is as important as winning war.[309] Maritime security's aim is to aid stability and security, which helps prevent war, therefore, it should be a priority mission that accompanies physical presence. Without conflict, there is an implicit "excess" capacity that allows the Navy to conduct other important missions, while still being available to support traditional warfighting requirements if the need arises. Excess capacity compared to traditional mission requirements is the reason the Navy forces are free to participate in maritime security missions, such as Combined Maritime Forces missions and TSC in Africa and the Middle East. National strategic priorities, along with Combat Commander requirements, will determine where the capacity goes, which determines where the Navy can provide maritime security overseas. Codified law enforcement roles can only help their maritime security portion of their dual role purpose without interfering traditional warfighting requirements

b. Streamlining Operations Reduces the Need for Increased Underways/Deployments

Just as the Navy conducts MSO in conjunction with traditional missions, combining underway training with MSO does not greatly affect underway time and frequency, while also offering improvement to homeland security**.** Overlaying fleet training areas with known maritime security threat areas is a way to streamline both training operations and homeland security. For example, moving the East Coast's Jacksonville fleet training area to south of the Florida Keys allows ships and aircraft to train, to provide extra sensors, and if needed, and possible interdiction of illegal migrants or illicit trafficking. Other examples can include establishing a Hawaii training operating

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308 USS John C. Stennis (CVN 74) Public Affairs, "John C. Stennis Carrier Strike Group Arrives in 5th Fleet," September 26, 2011, http://stennis74.wordpress.com/2011/09/26/john-c-stennis-carrier-strike-group-arrives-in-5th-fleet/.

309 *A Cooperative Strategy for 21st Century Seapower.*

area (OPAREA) adjacent to known fisheries in the Hawaiian EEZ, and moving the Southern California OPAREA to overlap the approaches to Mexico and Southern California to provide extra coverage for illegal migrants and illicit trafficking. Cases do exist where Navy ships, in the course of their training operations, have stumbled across illicit-traffickers in the Southern California OPAREA.[310] Shifting of OPAREAs will certainly increase operational costs to place the fleet a little further from normal fleet training areas, but there is the gained benefit of providing extra capability to address homeland maritime security threats if needed. The changing of OPAREAs is akin to streamlined operations that provide both regular operations with maritime security need, like to the Navy fishery patrols through Oceana, Micronesia, and the Marshall Islands, while ships are transiting across the Pacific.[311]

c. MSO Increases Individual Unit Burden

Direct law enforcement missions can be people intensive and time consuming to most combatants. A Navy ship "tied down" in performing a maritime security mission may not be available for other tasking, creating concern for Combatant Commanders. The reason a Navy ship may be unavailable for quick retasking is that an interdiction operation never ends with just a boarding. It can require thorough searches, lengthy evidence collection and information exploitation, detainee handling, and finally the chance for a lengthy trial.

Searches of vessels can sometimes take days, if properly conducted. For instance, in 2000, Coast Guard and customs officers spent ten days to search and remove cocaine from Haitian cargo ships.[312] In another example in 2009, a British frigate's

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310 Dominique Pineiro, "USS New Orleans Aids Vessel in Distress, Recovers Suspected Contraband," *Navy News*, August 24, 2011, http://www.navy.mil/search/display.asp?story_id=62350; USS Sampson (DDG 102), "USS Sampson Recovers Drugs in SOCAL," September 26, 2011, http://www.public.navy.mil/surfor/ddg102/Pages/USSSampson%28DDG102%29recoveredapproximately60balesofassorteddrugsfromthewatersofSouthernCalifornia.aspx#.T0BABrR0TPE.

311 USS Preble Public Affairs, "USS Preble Conducts Fisheries Patrol," March 3, 2011, http://www.public.navy.mil/surfor/ddg88/Pages/USSPrebleConductsFisheriesPatrol.aspx#.Tz1qz7RrUcs.

312 Arnold Markowitz, "Ships Yield Cocaine Haul Hidden Drugs Worth $23 million," *Miami Herald*, February 8, 2000.

(HMS Iron Duke) crew "spent more than 24 hours painstakingly scouring the vessel for narcotics. The drugs were hidden under the ship's regular stores, beneath a concrete floor and steel panels. Tonnes of stock had to be moved, the hard floor broken up with sledge hammers and metal panels unbolted before the stash was revealed." [313] Typically, lengthier searches are conducted in a port to free the law enforcement asset for follow-on operations,[314] but the process of potentially transporting suspects, witnesses, evidence, and escorting/towing a suspect vessel over long distances can increase the time a Navy vessel is engaged in a single maritime security mission.[315] Evidence collection and case package building can only add additional time in to the process.

Evidence does suggest that interdiction or related operations can potentially be lengthy and can prevent a ship from conducting other immediate tasks. Despite the potentially lengthy missions, if retasking was necessary for a higher propriety mission, it is assumed the Navy platform would end its current engagement as quickly as possible. Ultimately, the choice will fall on the operational commander to make the decision to continue engaging, or to disengage a suspected vessel. If they choose to disengage, it may create some delay for a ship to respond to other emergent tasking, but that delay can be counted in hours versus days. The point is that maritime security interdictions and related operations do not significantly delay or reduce Navy warship's ability to conduct traditional missions

2. Concern: There is a Negative Perception of the Navy's Involvement in MSO

Perception of the Navy's presence and action is important for obtaining maritime security. As discussed in the previous chapter, one of the most important aspects of achieving maritime security is for the Navy to be relevant to the needs of partner nations. As Edward Smith, a senior defense analyst, states, "the keywords in shaping a local

313 Daily Mail, "Royal Navy Seizes Record Cocaine Haul Worth £240m - Then Sinks Drug Boat," September 28, 2009, http://www.dailymail.co.uk/news/article-1216581/Royal-Navy-seizes-record-cocaine-haul-worth-240m--sinks-drug-boat.html#ixzz1p2nl2ovC.

314 Markowitz, "Ships Yield Cocaine Haul Hidden Drugs Worth $23 million."

315 Warner, "Pieces of Eight," 71.

security calculus are *actions* and *perceptions*." [316] Having the authorities to enforce law enforcement related incidents can also prove to have important strategic effects through perception. The rescue of the Iranian-flagged fishing vessel *Al Molai* provides a case in point because it created the opportunity to provide legitimacy for Navy operations in the region, undercutting the rhetoric of Iran who threatened the U.S. presence and even gaining praise from the Iranian government.[317] A law enforcement approach offers the chance for more access, as witnessed by the bilateral agreements with many Caribbean and Central American governments.

a. Ascertaining the Navy's Ability to Access to Partner Nations Through Law Enforcement Means is Problematic

The perception of military forces may play a critical role in preventing the Navy's "gray hull" ships to gain law enforcement access to partner nations. Since law enforcement operations are a manifestation of a nation's sovereignty,[318] the perception of using a foreign military to engage in law enforcement could be perceived as an unacceptable breach of that sovereignty.[319] For instance, the plan to use the U.S. Navy to conduct counter-piracy patrols to confront a spike in piracy around the Strait of Malacca in the early 2000s provoked criticism from Malaysia and Indonesia due to the perception it would erode their sovereignty.[320] However, Malaysia and Indonesia were willing to work with the Japanese and U.S. Coast Guards.[321] Perception concerns may also inhibit expanding bilateral/multilateral agreements to incorporate the Navy. [322] The

316 Smith Jr., "From Effects-Based Operations to Effects-Based Deterrence," 329.

317 CBC News, "Iran Salutes U.S. Navy for Somali Pirate Rescue," January 7, 2012, http://www.cbc.ca/news/world/story/2012/01/07/iran-navy-rescue.html.

318 National Research Council, *Maritime Security Partnerships*, 19.

319 Ibid., 37.

320 J.N. Mak, "Unilateralism and Regionalism: Working Together and Alone in the Malacca Straits," in *Piracy, Maritime Terrorism and Securing the Malacca Straits*, ed. Graham, Ong-Webb (Singapore: Institute of Southeast Asian Studies, 2006), 153.

321 Andrew Forbes, "The Roles of Maritime Forces in Protecting Energy Flows," in *Maritime Capacity Building in the Asia Pacific Region*, ed. Andrew Forbes (Canberra: Sea Power Centre-Australia, Department of Defence, 2010), 106–107.

322 National Research Council, *Maritime Security Partnerships*, 8, 200.

preponderance of JIATF-S's bilateral agreements with Latin America do not allow the Navy to conduct law enforcement independently of the Coast Guard or host nation ship-riders to enforce laws because of the nonmilitary nature of counter-illicit trafficking operations.[323] In contrast to the Navy, the overseas perception of the Coast Guard's "sovereignty expertise" in respecting the laws and sovereignty of partner nations is the reason the Coast Guard has access (including through bilateral/multilateral agreements) to many partners abroad.[324] Since these agreements are critical to expanding the jurisdictional reach of the United States, partner nations' rejection of the Navy's law enforcement roles could critically reduce the effectiveness of the Navy's expanded law enforcement authorities abroad.

While there does seem to be a perception issue with the Navy, its extent and exact nature are difficult to understand. It solicits the question: Is it the military nature of the Navy that prevents access, or is it the Navy has not proven its "sovereignty expertise," like the Coast Guard, since it has historically not conducted maritime law enforcement in order to build expertise and partner nation trust? Navy ships that employ LEDETs personify the question. Many of the partnership programs, including the bilateral agreements, do allow the use of Navy equipment for law enforcement purposes, as witnessed in the Southern Command's counter-illicit-trafficking operations. Outwardly, a pure Navy interdiction and a Navy-LEDET interdiction are almost identical. The only difference is four to six Coast Guardsmen. Even the tactical control shift of the Navy vessel to the Coast Guard (indicated by hoisting the Coast Guard flag from the yardarm) is primarily symbolic, since there is no statutory requirement for transfer. An interdicted suspect only sees a Navy helicopter, a "gray hulled" Navy vessel, and personnel with nearly identical uniforms. To an outside observer, it looks almost purely like a military operation. Yet, these operations are acceptable for many partner

323 For a list of current counterdrug bilateral agreements, see *U.S. Coast Guard* OPLAW *Fast Action Reference Materials*, series (2009) (For Official Use Only manual); National Research Council, *Maritime Security Partnerships*, 35–37.

324 Ibid., 8.

nations. This makes it hard to argue the "gray hull" perception problem. The real difference comes from the expertise and authorities the LEDET carries—lending credence that it is more an expertise issue.

In addition, there are plenty of instances where the Navy can obtain access in the international realm, such as the Proliferation Security Initiative, anti-piracy operations, and U.N. resolutions. Also, the fact that the majority of the world's navies are dual-natured navies (traditional and constabulary) lends credence to the idea that a military perception problem is not overly pervasive on the maritime domain. On the other hand, there is a growing advocacy among potential partner nations for establishing coast guards, which shows a drive to more civil maritime law enforcement oriented governance rather than utilizing standard military forces.[325] The worldwide naval capacity gap on the maritime domain very well could overshadow perception issues, as long as the Navy shows it is both authorized and capable of enforcing constabulary roles.

Preliminarily, a perception problem does appear to have some merit, but the degree and cause of the perception problem is difficult to ascertain. The mixed evidence does not definitively support if an issue is related to military or an expertise perception. No known research or studies exist to determine if the Navy is able to access partner countries acting in an independent law enforcement capacity. This represents a possible research area.

3. Concern: Jurisdictional Overlap Can Cause Confusion Among Agencies with Similar Missions

If the Navy has law enforcement authorities, this section will look at the potential for confusion arising from Coast Guard and Navy jurisdictional overlaps for maritime security missions. Expanding legal authorities will create greater mission overlap between the Coast Guard and the Navy. More mission overlap does create the potential for further confusion over jurisdictional issues in addressing maritime security threats. For instance, a Department of Justice OIG report found jurisdictional overlap confusion

[325] Stubbs, "Making the 1,000-Ship Navy a Reality."

in maritime and port security created the potential for incidents between the Coast Guard and FBI.[326] The OIG report concluded that greater cooperation and communication between the FBI and Coast Guard could mitigate those issues.[327] Better coordination/integration with the Coast Guard, along with greater utilization of the MOTR process, can help prevent jurisdictional issues and provide the proper response in missions. One of the easy processes that can reduce that potential is use the of LEA agents, such as a Coast Guard LEDET, who has direct jurisdiction over most threats.

Jurisdictional overlap is not likely to cause a considerable problem between the Coast Guard and Navy. This is because of the limited asset capacity and complimentary force structure of both services. The Navy's offshore capability offers a complementary role to Coast Guard forces, especially in balancing their limited deepwater capability and capacity. The Navy's offshore operations and training should help preserve over-lapping jurisdictional issues, since a majority of Coast Guard are closely tied closer to the shore. The complimentary forces can create a more balanced approach to applying maritime security to the homeland. In addition, processes already exist that can help avoid jurisdictional confusion between the Coast Guard and the Navy.

In addition, current coordination processes, such as MOTR or the operational control (OPCON) and tactical control (TACON) transfer procedure used with LEDETs, aid in the prevention of jurisdictional overlap. The OPCON and TACON transfer process places the Navy unit under the command of a LEA during maritime interdictions. It increases coordination and demarcation of operational responsibilities because it places a civil law enforcement agency clearly in charge of an emergent mission, so they can delineate jurisdictional responsibilities. This process can happen regardless of having embarked LE agents or not. In addition to reducing jurisdictional confusion, it increases civil legitimacy and control of military involved in LE missions, and it fosters deeper

326 U.S. Department of Justice (DOJ), Audit Report 06-26: *The Federal Bureau of Investigation's Efforts to Protect the Nation's Seaports* (Washington DC: DOJ, Office of the Inspector General, 2006), iii.

327 Ibid.

coordination between the Navy and LEAs. [328] The process should also be considered for use with the Coast Guard for overseas operations because of the Coast Guard's open access with other nations and maritime organizations, and operational expertise in maritime security and civil maritime operations. Since the Navy and Coast Guard have over three decades of control transfer experience from law enforcement missions, it will be unproblematic to expand the process.

D. READINESS

The main argument against the Navy conducting maritime security missions is the detraction from the skills and time needed to train for traditional warfare missions. This section will argue the Navy has the capacity to conduct training for maritime security missions and traditional missions because the frequency of most direct enforcement missions is relatively low. In addition, the Navy's multi-mission capability, along with MSO's partial similarity to traditional missions, allows the Navy to conduct MSO without much effect on its warfighting capability. Lastly, the changing nature of the threat into more sophisticated and dangerous threats increases the relevancy of more traditional warfare methods to confront them.

1. Concern: MSO Does Not Allow Time for Traditional Warfare Training

The capacity to train for traditional warfare is possible while conducting maritime security missions. Although maritime security threats are abundant, actual enforcement missions do not typically occur for law enforcement platforms on a daily basis. For instance, on an average six-month counter-drug deployment, a Navy ship may only

[328] OPCON and TACON transfer places the Navy platform under a Coast Guard tactical commander, where the platform converts into Coast Guard platform and the mission essentially becomes a Coast Guard operation. Currently, a Coast Guard officer or petty officer must board the platform for this to occur. DON, NWP 3-07.4, 16–18.

interdict three or four illicit-trafficking vessels.[329] That equates to less than one actual counter-drug interdiction a month. Anti-piracy operations, which potentially have higher operations tempo for interdictions, are still relatively infrequent. For example, the USS Bainbridge's seven-month deployment in 2011 conducted 27 anti-piracy missions.[330] This represents a high frequency deployment. In contrast, the USS Laboon only conducted three anti-piracy missions during a six-month deployment in 2010.[331] Even at the higher end of interdiction frequency, anti-piracy operations accounted for only four missions a month. The point is to show the frequency of actual maritime security interdictions is small compared to relative underway time, allowing the time to train for traditional mission areas as well. It is important to recognize that ships do conduct other activities during deployments, which can include theater security cooperation, humanitarian assistance and disaster relief, military-to-military interaction and bilateral and multinational training.[332] The times between actual events and other activities allows time for training on traditional mission sets. The evidence suggests maritime security operations do not seriously detract from traditional warfare training time.

a. MSO Can Stress an Individual Ship's Resources Potentially Reducing Readiness

The detention of suspects can also create a burden to Navy ships because they are not meant to handle prisoners. The Optimal Manning Initiative reduced ships' crew sizes, leaving little margin between necessary routine duties and the addition of

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329 San Diego News, "Deployed Marines, Navy Frigate Return Home: Both Units Deployed For About 6 Months," February 2, 2005, http://www.10news.com/news/4156708/detail.html; USS Stephen W. Groves Public Affairs, "USS Stephen W. Groves Returns Home from Counter-Drug Deployment, *Navy News*, May 3, 2008, http://www.navy.mil/search/display.asp?story_id=36799; Commander, U.S. 3rd Fleet Public Affairs, "U.S. Warships McClusky and Fletcher Return to San Diego," *Navy News* June 7, 2004, http://www.navy.mil/Search/print.asp?story_id=13659&VIRIN=14650&imagetype=1&page=2.

330 WVEC.com, "USS Bainbridge Returns From Counter-Piracy Mission," August 3, 2011, http://www.wvec.com/my-city/norfolk/USS-Bainbridge-returning-from-counter-piracy-mission-126666453.html.

331 WAVY.com, "USS Laboon Returns to NS Norfolk: Ship left Hampton Roads on August 17, 2010," February 16, 2011, http://www.wavy.com/dpp/military/USS-Laboon-to-return-home-Wednesday.

332 Ibid.

extra duties, such as guard duty.[333] Holding detainees on board ship requires crewmembers to be removed from normal ship's watch rotation to maintain guard over suspects, extra logistics, and dedicated space to hold them.[334]

Depending on the amount of detainees, the burden of detainees can create extra strain on a ship's regular operations. In some cases, it can take time to find the proper jurisdictional venue to prosecute offenders, extending the time for holding detainees aboard ship. For example, by the end of January 2012, 71 pirates are still being held aboard anti-piracy warships waiting to transfer the pirates to a court, but no country is willing to take jurisdiction for prosecution.[335] Piracy is as an extreme situation, because most other maritime security threats, with the exception of some migrant cases, have a little clearer jurisdiction of responsible nations in order to transfer suspects quickly. If detention will be lengthy, the transfer of detainees to ships that can absorb the burden, like amphibious ships and aircraft carriers, can alleviate the load from other combatant ships.

Cases going through the judicial process can take a great deal of time. For the Navy (and even the Coast Guard), ship's personnel acting as court witnesses may be lost to court proceedings for periods at a time, creating greater hardships for the crew.[336] Good procedures/doctrine can reduce the impact of losing a critical/large number of crewmembers to court proceedings, such as designating noncritical crewmembers to function as the witnesses.

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[333] GAO, *Military Readiness: Navy Needs to Reassess Its Metrics and Assumptions for Ship Crewing Requirements and Training*, by Sharon L. Pickup, (GAO-10-592), Washington, DC: GPO, 2010, http://www.gao.gov/new.items/d10592.pdf.

[334] This denies the ship the use of those personnel, logistics, and the ships spaces in order to accommodate potential prisoners. NCIS, *Guidelines for Collection and Transfer of Evidence to Kenya*, (n.d.).

[335] C. J. Chivers, "Seized Pirates in High-Seas Legal Limbo, With No Formula for Trials," *New York Times*, January 27, 2012, http://www.nytimes.com/2012/01/28/world/africa/seized-pirates-in-legal-limbo-with-no-formula-for-trials.html?pagewanted=all.

[336] Travis Kavulla, "Prosecuting Captured Somali Pirates Poses Challenges," *Fox News*, November 26, 2008, http://www.foxnews.com/story/0,2933,457827,00.html.

Law enforcement missions can also present extra burdens to individual warships, but there are no existing studies or assessments to determine if these extra burdens truly degrade a warship's warfighting capability. As such, it cannot be argued that direct enforcement operations degrade warships' warfighting capabilities/readiness. However, it is important to recognize the potential effects these operations have on individual crews and ships.

2. Concern: Traditional Warfare and Maritime Security Skills are Exclusive

Another concern for the employment of Navy forces against maritime security threats is the fear that maritime security skill sets will erode warfighting skills. This section argues there are some similarities in the equipment, sensors, and tactics used for MSO and traditional warfare. In addition, the changing nature of the maritime security threat is starting to draw the threats closer to hybrid or traditional threats. Lastly, if the most prominent actual threat is maritime security related, then improvement of those skills is currently necessary to help provide security to the global commons.

a. MSO Offers Some Similarity and Benefit to Traditional Missions

Despite arguments that MSO does not provide real-world training for traditional warfare missions, evidence suggests MSO does provide some benefit for real-world traditional warfare experience. Counter-drug operations in the Caribbean and Eastern Pacific have long been used as a proving ground to test and evaluate current and new technologies and platforms.[337] This is understandable, since many of the sensors, communications systems, networked systems and search skills used for the real-world counter-drug operations are employable for traditional combat needs.[338] These counter-drug missions must have enough real-world applications to satisfy the DoD for testing equipment and platforms.

337 Munsing and Lamb, "Joint Interagency Task Force–South," 38.

338 Thachuk and Tangredi, "Transnational Threats and Maritime Responses," 67.

Clearly, drug-operations and other MSO cannot provide real-world testing against high-end threats, like ballistic missiles or well-armed warships. Training systems and larger fleet exercises are available to provide that coverage. As criminal and terrorist organizations get increased access to proliferated weapons that gap between high-end and low-end may begin to diminish. The Hezbollah attack on an Israeli frigate with an anti-ship missile in 2006 helps highlight this.[339] Drug-cartels now employ fully submersible submarines in their efforts to evade law enforcement.[340] This poses a particular problem for the Coast Guard, which does not have anti-submarine capability. Therefore, the threat represents one where only the Navy has the capability to engage the threat at sea. The use of fully submersible submarines creates the opportunity for the Navy to employ its anti-submarine warfare skills against real-world threats.

b. The Navy is Multi-Mission Capable

One of the Navy's claims is that it is a multi-mission service that is able to provide maritime security and humanitarian assistance while remaining combat effective.[341] These multi-mission capabilities of the Navy allow it the flexibility to switch quickly between operations short of war and war. For instance, a deployed aircraft carrier can fly sorties in support of ground operations in Afghanistan one day, and on another

339 Haaretz News, "Soldier Killed, 3 Missing After Navy Vessel Hit Off Beirut Coast," July 15, 2006, http://www.haaretz.com/news/soldier-killed-3-missing-after-navy-vessel-hit-off-beirut-coast-1.193112.

340 Philip Caulfield, "Colombian Military Seizes 100-foot Drug Sub Capable of Holding 8 Tons of Cocaine," *NY Daily News*, February 15, 2011, http://www.nydailynews.com/news/world/colombian-military-seizes-100-foot-drug-capable-holding-8-tons-cocaine-video-article-1.136249#ixzz1p3d9yQw8; Gabriela Molina and Vivian Sequera, "Fully Submersible, 100-foot Submarine is Quantum Leap for Drug Smugglers, July 04, 2010, http://www.cleveland.com/world/index.ssf/2010/07/fully_submersible_100-foot_sub.html; Munsing and Lamb, "Joint Interagency Task Force–South," 73.

341 *Naval Operations Concept 2010*, 48.

day provide humanitarian aid to Japan.[342] Multiple mission platforms[343] are also indicative of the Navy's determination to use its platforms to address a large array of maritime threats. Maritime security is an acknowledged capability of most of the Navy's Battle Force Ships.[344] Expanding law enforcement authority and capability transforms most Navy platforms into more capable platforms that can address a greater spectrum of maritime threats. The LEDET program quintessentially represents the combination of LE authority and capabilities onto a traditional multi-mission Navy platform with proven success.

c. Consistent Employment Improves Skills Proficiency for Most Likely Operations

In the absence of traditional naval war and/or a true peer enemy, like the Soviet Navy, MSO dominates the Navy's daily operations. If Navy personnel and platforms are likely be engaged in MSO, then it seems appropriate to dedicate training and building operational expertise in order to become more effective at those operations. In other words, there needs to be a proper balance between the most likely threat and the most dangerous one.

Logically, the more a Navy asset performs a mission, the better it will become at that mission. The same is true for maritime security. Navy assets conducting continuous homeland and overseas MSO offer the opportunity for building and sustaining operational experience.[345] Performing homeland MSO helps prepare units for

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[342] This refers to Operation Tomodachi, in which the aircraft carrier USS Ronald Regan was providing humanitarian relief and acting as an operations platform for the Japanese. Fred W. Baker III, "U.S. Forces Provide Relief Aid to Japan," *American Forces Press Service*, March 13, 2011, http://www.defense.gov/news/newsarticle.aspx?id=63144.

[343] U.S. Navy Destroyers represent one of the Navy's multiple mission platforms because they can "operate in multi-threat air, surface and subsurface threat environments. These ships will respond to Low Intensity Conflict/Coastal and Littoral Offshore Warfare (LIC/CALOW) scenarios as well as open-ocean conflict providing or augmenting power projection, forward presence requirements, and escort operations at sea." NAVSEA, "PEO Ships DDG 51: Program Summary," (n.d.), http://www.navsea.navy.mil/teamships/PEOS_DDG51/default.aspx.

[344] A. Fritz, A. Freedman, and P. Haussman, *The Navy Role in Confronting Irregular Challenges*, 44–48.

[345] Randall, "Ready for the Future?," 26.

deployment, while overseas experience ensure units are highly trained for homeland operations. To determine the benefits of combining normal training operations with MSO is challenging. Since the Navy does not conduct homeland MSO on a regular basis or in a law enforcement capacity, no evidence exists to formulate a conclusion.

Depending on how authorities are expanded will determine the level of expertise and authorities the Navy will have. The regulatory mission of the Coast Guard allows them to have greater expertise in private/commercial maritime platforms and operations. This expertise and regulatory authority leads to many of the Coast Guard's law enforcement missions. For instance, many of criminal activities are discovered through "compliance examinations," whether by accident, or if there was reasonable suspicion for illegal activities.[346] The amount of training and operational experience needed for regulatory inspections makes it a prohibitive duty for Navy personnel. The Navy's traditional core focus does cap its dedication to law enforcement training and maritime security operations, so the Navy cannot gain the same expertise and understanding of private/commercial vessels and civil maritime operations to the same degree as the Coast Guard. The Coast Guard's daily concentration on civil maritime operations affords them the myopic focus to build the expertise for regulatory functions.

An option for the Navy operating near the homeland is the ability to draw from existing law enforcement agencies, besides the Coast Guard, to provide expertise and legal authorities. For example, a Navy about to conduct training operations near a fisheries location within the EEZ can bring aboard a National Oceanic and Atmospheric Administration (NOAA) Fisheries Service ship-rider. This is translatable to any other LEA, like the DEA, CBP, and FBI for other maritime security threats. These services will provide expertise in their field, but they do not have the multi-discipline nature and tactical expertise of the Coast Guard.

346 "Compliance examinations are most closely associated with enforcement of laws and regulations pertaining to recreational boating safety, fisheries management, conservation, marine pollution, and customs. The Coast Guard refers to this activity as maritime law enforcement (MLE), enforcement of laws and treaties (ELY), and sometimes inspections." National Research Council, *Fishing Vessel Safety: Blueprint for a National Program* (Washington, DC: The National Academies Press, 1991), 213–214.

E. FISCAL COSTS

The largest problem for the Navy in maritime security is having the adequate funding to provide for both maritime security and traditional missions (e.g., a capacity issue). Funding ideally allows the Navy to apply more money, personnel, and platforms to maritime problems. With pending budget constraints and competition for resources, it can be assumed that an increase of dedicated funding and resources is not likely for maritime security, unless MSO can be efficiently and economically combined with traditional missions and its associated funding.[347]

There are two main concerns related to fiscal cost and the increasing of law enforcement powers for the Navy: first, expanding the Navy's role in maritime law enforcement will require extra funding and increase the operating budget. Second, the cost of using high-end warships is too disproportional for low-end threats. For the former, expanding law enforcement roles will require an increase in funding, to support LE roles, unless it assumes a greater share of the Navy's current budget. However, the cost of direct enforcement operations is relatively small compared to the Navy normal operating budget. In response to the second concern, Navy warship operating costs are considerably higher for MSO compared to the Coast Guard.

1. Concern: Law Enforcement in MSO is Likely to Increase in Budgetary Costs

Findings do indicate that there are increases in the budgetary costs for expanding the Navy's maritime security mission. While these costs are increased, there is no determination on the increase because it highly depends on how LE authorities and capabilities are expanded. Preliminary evidence suggests that actual direct MSO costs are relatively small, especially when in conjunction with traditional operations.

[347] Consequently, resources will be considered zero sum meaning resources/funding increase to one mission area will subtract funding from another area (e.g., maritime security funding will subtract from traditional mission funding).

a. MSO Does Increase Budgetary Costs

To provide the Navy with law enforcement authorities and capabilities will require funding to build and support training, personnel, equipment, and operational funding for law enforcement missions. The total costs are highly dependent on the options used for expanding law enforcement roles. An example of training costs to send a junior officer or petty officer through the Coast Guard's Maritime Law Enforcement School would cost the Navy $5,661 in FY 2012.[348] The cost can be somewhat offset by the fact that junior officer would not have to attend the Navy's VBSS Boarding Officer course of instruction. However, the Coast Guard does not have the capacity to train potentially hundreds of Navy candidates;[349] therefore, funding would be required to increase the capacity law enforcement. For an example of operations cost, the DoD cost estimate for dedicated anti-piracy operations was $64 million in FY 2009,[350] and most of that cost was incurred by the Navy. If operations were to include fisheries enforcement, customs, and immigration enforcement, the direct costs would certainly increase. The purpose is to show that there are costs associated with adding law enforcement roles for the Navy.

In addition, much of the Navy's overseas maritime security missions are funded currently by an Overseas Contingency Operations (OCO) budget supplemental.[351] The impending termination of OCO funding is likely to cause a reduction in the Navy's maritime security operations abroad, if not funded from other sources. If maritime security operations are going to be maintained at their current levels, it will require a larger share of the Navy's regular operating budget.

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348 Tim Casares, email message to author, January, 18, 2012.

349 Lou Orsini in discussion with author, Washington, DC, December 6, 2011.

350 GAO, *Maritime Security*, 9.

351 DoD, *FY 2012 Overseas Contingency Operations (OCO) Request*: *Exhibit OP-05 Overseas Contingency Operations*, 154.

b. Direct Maritime Security Mission Costs are Relatively Small

Increased costs are inevitable for maritime security operations, regardless of the options employed. An important fiscal cost are those associated for direct enforcement operations, such as detainment and providing medicine/meals for detainees, vessel towing/escort, evidence/prisoner transportation, fuel, etc.[352]

Overall, these costs are relatively small. For example, the DoD's $64 million for dedicated anti-piracy operations would, if the Navy incurred the majority of the costs, represent roughly 0.2 percent of the Navy's FY 2009 regular operating budget.[353] Piracy operations denote one of the Navy's largest dedicated MSO. Even for year round operations, with a daily average of four dedicated Navy warships and other supporting elements, the total cost represents only a small portion of the Navy's operating budget. The Coast Guard's MSO support for the Navy in the Middle East (including six cutters and their crews, several port security units, LEDETs, and Maritime Security and Safety Teams) only cost $241 million (0.56 percent of the entire Navy's FY 2010 O&M budget) for FY 2010.[354] Almost all of the funding comes from OCO supplemental funds.[355] Initial evidence shows that the direct fiscal costs are related with MSO. Further tracking and recording of fiscal costs associated with MSO can help provide the data and metrics needed for later research into the actual fiscal costs linked to the Navy's MSO. This will help policymakers determine the real expenses involved with maritime security operations.

2. Concern: Navy High-End Warships are Too Expensive for MSO

Large surface combatants can handle most maritime security threats, but they represent a disproportionate response to most maritime security threats. Most Navy surface combatants are designed for high-end threats and require a much higher operating

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352 Warner, "Pieces of Eight," 39.

353 FY09 Highlights, 7–3.http://www.finance.hq.navy.mil/FMB/09PRES/Highlights_book.pdf

354 Ibid., A-5.

355 DoD, *FY 2012 Overseas Contingency Operations (OCO) Request*: *Exhibit OP-05 Overseas Contingency Operations*, 154.

cost to confront a low-end threat compared to small combatants, like frigates or cutters.[356] Table 1 shows the daily operating costs of larger Navy combatants can cost nearly two to eight times that of smaller combatants. Combatant commanders can address maritime security threats with the current force structure, and currently do this. This could represent a trade-off for most combatant commanders to employ the Navy in a dual role. If combatant commanders are unwilling to accept the risk of reducing high-end capability, then they need to be willing to accept the disproportionate higher costs of applying high-end capabilities to low-end missions.

If the cost to employ high-end warships remains unsustainable, while the need for maritime security remains strong, other alternatives exist to provide the Navy with a balanced "High-Low" force, using the words of former Chief of Naval Operations Admiral Zumwalt's vision for a balanced fleet,[357] A study from the Naval Postgraduate School, led by naval strategist Wayne Hughes, proposes the Navy can have a balanced fleet that not only increases the Navy's capacity but is also more capable in traditional warfare and maritime security. In addition and most importantly, it can be achieved utilizing the Navy's current budget.[358]

Any increase in operations without extra funding will not be a popular proposition for most policymakers. Theoretically, if the Navy organizationally increases the importance of maritime security, then allotting a greater percentage of the total budget is feasible. This is why determining actual budgetary costs are an important component in persuading the government on the employment of the Navy in maritime security operations. This is beyond the scope of this paper but to explore the aggregate cost of MSO, as compared to traditional missions, presents an important avenue for further research.

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356 Congressional Budget Office (CBO), *Options for Combining the Navy's and the Coast Guard's Small Combatant Programs* (Washington, DC: GPO, 2009), 5, http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/104xx/doc10460/07-17-smallcombatants.pdf.

357 Jonathan E. Czarnecki, "Confronting All Enemies: The U.S. Navy, 1962-1980," in *In Peace and War Interpretations of American Naval History*, eds Kenneth J. Hagan and Michael T. McMaster (Westport, Conn: Praeger Security International, 2008), 275.

358 Hughes, et al., *A New Navy Fighting Machine* (Monterey, CA: Naval Postgraduate School, 2009).

Table 1. Average Daily Operating Costs for U.S. Naval Vessels Commonly Involved in Maritime Security Operations[359]

Ship Type	Average Life-Cycle Cost Per Day (thousands of dollars)	Average Operating Cost Per Day without Platform Acquisition Costs
Destroyer (DDG-51)	$240	$122
Cruiser (CG-47)	$315	$157
Littoral Combat Ship (LCS-1)	$117-$128*	$38-$53*
Frigate (FFG-7)	$137	$77
National Security Cutter (NSC)	$73	$20
Offshore patrol Cutter (OPC)**	$39.5	$10

*** Costs depended on the LCS variant and does not include for the costs of the warfare modules**
**** Offshore Patrol Cutter cost is estimated since none are operational**

F. CONCLUSION

Despite the Navy's recognition that it needs to balance traditional warfare and irregular challenges, the Navy's remaining traditional warfare focus creates competition between maritime security requirements and traditional warfare resources. This competition, exacerbated by austere budgets and growing costs of security, has sparked a debate about the importance and costs of maritime security for the Navy. The opponents of increased maritime security roles are concerned that the costs (fiscal, operational focus, and warfighting readiness) on the Navy's mandatory warfighting mission too prohibitive. This chapter attempted to evaluate the concerns because it helps determine if the costs and benefits for law enforcement oriented MSO is worth it.

[359] The table is created by the author, but the information is derived from Douglas Elemdorf, "Operations & Support Costs for Four Types of Navy Ships," (Congressional Budget Office (CBO) Letter to Sen. Jeff Sessions, April 28 2010), 7; CBO, *Options for Combining the Navy's and the Coast Guard's Small Combatant Programs*, 3.

1. Operations

The main operational concern is that MSO further increases the Navy's already substantial workload. Analysis of the concerns shows that the main burden on the Navy is a general capacity issue, not necessarily caused by maritime security resource requirements. This is because many maritime security missions are conducted in conjunction with normal deployments. The absence of traditional war allows Navy assets to perform maritime security in order to benefit security of the maritime global commons, while still maintaining a traditional presence.

Streamlining training with homeland security missions, the Navy can improve homeland maritime security if applied smartly (e.g., enhanced cooperation and coordination with maritime LEAs). It provides extra maritime LE capacity and improves/sustains MSO skills while still maintaining a roughly normal operations/training tempo. However, an increase in dedicated MSO patrols and deployments will increase the burden on Navy platforms without increasing capacity or reducing regular deployments. The ultimate responsibility lies with Combatant Commanders to determine the priorities and objectives for the employment of forces to determine the overall capacity needed to meet those objectives.

The perception concern has some merit, but the extent and cause are undetermined. The extent is undetermined because there are instances where countries allowed the Navy access and rejected access for law enforcement roles, leading to the conclusion that it is different for individual nations. It becomes important to determine if the perceptions of the Navy as a military service will overshadow its capability to conduct maritime LE. Evidence does not exclusively support one way or the other. Further study into this area is important to understand what the potential limitations are for the Navy to participate with other nations in a law enforcement capacity.

2. Readiness

Maritime LE does not represent a large degradation to the Navy's traditional warfighting readiness. The multi-mission nature of Navy assets allows it to adapt quickly

between traditional and maritime security missions without much effect on its warfighting readiness. Even some of the systems and skills used for traditional warfare are applicable to MSO, further reducing the degradation. The frequency of interdictions will dictate the time available for traditional warfare training. In most cases, the frequency of MSO interdictions is relatively small compared to underway/deployment time allowing the Navy the time to still train for traditional warfare. If the frequency of interdictions significantly increases, then it will start to degrade traditional warfare training and readiness.

3. Fiscal Costs

To provide the Navy law enforcement powers will require an increase in dedicated funding to provide the infrastructure and support needed to support the mission. How those costs are distributed and to what to amount is highly dependent on how law enforcement powers are provided, whether sourced organically from the outside the organization, or both. Once those LE powers are in place, there is an expected increase in fiscal costs related to direct enforcement missions, such as those seen from anti-piracy operations. Preliminarily, many of those direct costs seem relatively small and consume only a minimal amount of the Navy's operating budget. With shrinking budgets and a reduction in OCO funding, the Navy will need to fund those costs at the expense of traditional warfare funding.

The Navy's high-end warships are capable of addressing maritime security threats, but high-end warships are not economical means to confront maritime security threats. Clearly, there are increased costs in using high-end warships to address maritime security threats, as compared to utilizing Coast Guard platforms. However, a benefit for combatant commanders is that high-end warships retain the capability to address the full spectrum of high-end to low-end maritime threats.

4. General Conclusion

The overall significance of the concerns for increased Navy law enforcement is not easy to determine. The first and principal reason is that the Navy has not determined

what capacity it has for maritime security missions. The second reason is there are still large gaps in the research to help provide better data and understanding to the concerns. For now, until this topic is further researched, the concerns are not overly convincing to oppose expanding the Navy's law enforcement role to overcoming the gaps in maritime security.

Maritime security is a strategic imperative for the Navy. In reality, the Navy already conducts MSO on a daily basis in order to manage global security concerns. As such, operational necessities do not afford the Navy the luxury to reject maritime security from its multi-mission capabilities. The employment and workload of the force is still a strategic decision for the U.S. government and Navy leadership, but it does allow them to deploy a force that is armed with the legal authorities and subsequent capabilities able to operate in an uncertain security environment, where the maritime threat can be criminal, traditional, or hybrid in nature. Employing forces in a smart manner allows the Navy to maximize the benefits to the maritime domain, while minimizing costs to the fleet.

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VI. CONCLUSION AND RECOMMENDATIONS

A. THE NAVY IS NOT PROPERLY ORGANIZED AND EMPLOYED FOR MARITIME SECURITY

This thesis asks the question: Are our maritime security organizations, including the Navy, the Coast Guard and other organizations, properly organized and employed to ensure our nation's maritime security? This broad question focuses particularly on the Navy and the effect of law enforcement roles on the Navy in maritime security operations. The answer is, no, the Navy is neither properly organized nor employed to meet our nation's maritime security needs; our nation's security is at risk because of the nature of the maritime threat and because of gaps and seams in our laws and policies (authority), doctrine (capability), and organization (capability and capacity). As established in Chapter IV, the Navy needs all three—authorities, capabilities, and capacity— to effectively conduct maritime security.

1. The Navy's Lack of Law Enforcement Roles Degrades Maritime Security

Laws and policies are important for an organization in establishing the types of capabilities needed and their implementation. Legal and policy restrictions prevent the Navy from direct involvement against many of the maritime security threats. This binding effect plainly reduces the efficiency of national and international maritime security. The current laws and policies are disconnecting the Navy's missions from the law enforcing powers needed in order to confront the criminal nature of maritime security threats. While some threats, such as terrorism or hybrid threats, can require military capabilities and equipment, they still require law enforcement powers and laws to best address the threats. The change, over time of technology and sensitivity to the employment of force, has put the traditional system under strain in response to irregular challenges, compared to the past. The cliché, "Hang them [the threat offender] from the

yardarm" [360] is no longer appropriate for human rights purposes today; therefore, firepower is no longer the only tool, and certainly not the most pertinent, in maritime security. Arrest and prosecution becomes the most desirable means to remove the threat from the maritime domain.

Maritime security threats have culminated to the point where the Navy institutionalized a maritime security mission into the Navy's strategy and daily operations, but the laws and policies have not kept pace. In turn, they are preventing the Navy from receiving or institutionalizing law enforcement powers and capabilities that will make the Navy better at MSO and improve maritime security. Without the legal institutions forcing the change, the Navy is not expected to build the appropriate LE proficiency needed in these areas. However, the prevalence of maritime security threats and growing maritime security needs keep exempting the Navy from their general restriction in maritime law enforcement missions. When polices and laws are contradictory to the nature of the mission, it reduces MSO effectiveness.

Chapter IV clearly showed there are gaps in the Navy's skills and doctrine to obtain desirable outcomes, such as prosecution to improve the potency of MSO. Fine law enforcement skills, such as minimal use of force in order to reduce disruption to society, knowing how to conduct effective and legal searches, the knowledge to piece together case packages, and knowing the difference between evidence and intelligence, become incredibly important in maritime interception operations. The criminal nature of these threats and their extensive use of the civil maritime systems require a key knowledge of the law enforcement tactics, techniques, and procedures that make maritime LE agencies effective against standard commercial traffic. Without these skills, the Navy is unprepared and only partially effective in MSO.

The current division of labor and restriction in law enforcement creates a numerical shortfall in the vessels needed to protect the maritime domain. While the Navy

[360] Execution by hanging at the yardarm, which is part of a spar on a mast from which sails are set on old sailing vessels, was a traditional naval punishment at sea until the late 1800s. Washington Examiner, "Hang Them From The Yardarm," April 2009, http://washingtonexaminer.com/opinion/op-eds/2009/04/hang-them-yardarm/37552.

does use its ships to provide maritime security overseas, the division of labor exacerbates the capacity shortfall in the homeland. The Coast Guard, despite its tremendous contribution to the safety and security of American waters, is too overburdened and underequipped to meet the challenges of maritime security within the EEZ. As maritime traffic continues to increase and budgets decrease, it only seems logical to apply the Navy to provide coverage for the homeland where and when it can. As witnessed in the scenario in Chapter I, using the Navy's presence and with the right capabilities can positively affect homeland maritime security.

The interagency process, with its proven success in the cases of the LEDETs and other shiprider programs, has a major capacity shortfall. There are simply not enough LEDETs or other law enforcement agencies to leverage law enforcement powers and expertise for all the Navy platforms that may be involved in MSO. This shortfall requires action by the government and/or the Navy to find a way to reduce the shortfall, whether it is the granting LE powers and training for the Navy, or expanding the other organizations to provide LE coverage for the Navy.

The testimony made by Rear Admiral Sinclair Harris, who leads the Navy Irregular Warfare Office, provides a good summary of the problem with the Navy's limited authorities and the current interagency process:

> Mr. THORNBERRY. …Where I would add, that evolution and maturation of doctrine is really critical and not just within the services, but within the country as a whole. Enormous challenges. More than the technical, I think, the law, and the policies, and doctrine and so forth.
>
> Admiral, let me just follow up…would you just make a brief overview about the relationship between you all and the Coast Guard when it comes to irregular warfare? Seems to me they have some law enforcement authorities that complement, hopefully, what you all do. Can you just comment on that briefly?
>
> Admiral HARRIS. Yes, sir, I would be glad to…What we find with the Coast Guard, quite simply, is this. While the Navy maybe has capacity out to here [a hand gesture with hands positioned apart] in the number of ships, and sailors, and planes and the things we have to go out and do our mission, our authorities are fairly narrow because we are Title 10. On the

> other hand, the Coast Guard has got a culture and has got capability and has a way of doing these things, and they have got a lot of entryway with the Departments of Interior in a number of nations that really hit the home of what the preventive actions that have to happen. Unfortunately, the Coast Guard only has capacity out to here [a hand gesture with hands positioned closer together], so it is trying to marry those two up [that is the issue]… [361]

Maritime Security is the most important consideration for the majority of the world's navies. If the U.S. Navy wants to be recognized as a significant partner by these navies, it must participate in maritime security activities. Law enforcement provides the best means to address threats to maritime domain. Therefore, the U.S. Navy needs to be adept at law enforcement to participate effectively in maritime security activities with partner navies. Currently, the Navy does not translate well for the needs of other states in building their capacity. It reduces U.S. leadership, influence, and accessibility to partner nations.

The conclusions do not say the Navy is not a valuable member in providing maritime security because of its deficiencies and gaps. Rather, the Navy is one of, if not, the *most* valuable tool to help provide maritime security to the maritime domain. It is the design of the current U.S. maritime security institution that is in large part responsible for the gaps in maritime security.

2. The Problem is a Little Deeper Than Just Authority and Capability

Although statue authorities negatively affect the U.S. Navy's role in maritime law enforcement, they are by no means strictly binding, as clearly demonstrated earlier and cannot be blamed for the sole reason the Navy does not conduct law enforcement. International laws, lack of constitutional and congressional law, policy exception clauses, executive authority, and self-defense can give the U.S. Navy the means to act with law enforcement authority for almost the entire range of maritime threats. The blame must also be placed on the Navy's long-standing focus on traditional warfighting. The U.S.

[361] *Institutionalizing Irregular Warfare Capabilities*: *Hearing before the House Armed Services Committee*, 112th Cong. 89 (November 3, 2011), 35–36.

Navy's common mentality of "we do not do law enforcement," is prevalent. Its force structure and focus on traditional warfare creates a mismatch for the needs of the maritime security missions it conducts on a daily basis.

The Navy's strategic culture provides a unique insight to how the Navy manages its maritime security mission. Much of its strategic culture is based on historical experience and cultural norms. Lack of nontraditional threats until their reemergence in the late twentieth century, the *Posse Comitatus* Act, and the existence of a separate and capable maritime law enforcement agency (the Coast Guard) led the U.S. Navy to dismiss constabulary maritime duties, which has been a traditional naval duty for hundreds of years.[362] The Navy took advantage of a strategic opportunity (with the help of the Navy's largest advocate Alfred T. Mahan) [363] to become the traditional, powerful, and technologically inclined force that exists today.

The Navy's unwillingness to break from tradition comes from the internal organizational resistance to change linked to habits, thinking, and routines. Tradition and independence is one of the most sacred cultural tenets of the Navy, as with many of the other armed services. Adherence to tradition, by definition, creates a culture of reluctance

[362] Other global navies including the Spanish, Dutch, and British Royal Navies played an important role in preserving the freedom of the sea through constabulary means. Daniel Whiteneck, et al., *The Navy at a Tipping Point: Maritime Dominance at Stake?* (Alexandria, VA: CNA, 2010), 10.

[363] *Russell Frank* Weigley, *The American Way of War: A History of United States Military Strategy and Policy* (New York: Macmillan, 1973), 175.

to change. The U.S. Navy, being an organization steeped in tradition, has a long history of resistance to change.[364]

The emergent threats on the entire maritime domain, bolstered by new technologies, and limited resources require new thinking and reevaluation of strategies to balance traditional and nontraditional threats. This is not easy for an organization that relies on its traditional strength and established principles. The resurgence of asymmetric threats and lack of peer competitors has put the Navy in a strategic dilemma. This is important because the adherence to tradition becomes a default position during times of strategic uncertainty. Although steps have been taken that increase the importance of confronting maritime security threats, the Navy's independence and resistance to change put into question the effectiveness of these steps to institutionally adjust to the importance of maritime law enforcement. This kind of resistance can be related to the changes the FBI and CIA experienced after the fall of the Soviet Union leading up to the 9/11 attacks.[365] It will not changed until it is forced, or a tragic event occurs in which the U.S. Navy had the potential to stop, but could not.

The purpose of this section is not to get deep into the Navy's normative problems involved in accepting law enforcement roles for maritime security. It is to highlight

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[364] Documented resistance came in many forms. The first big challenge to change was amidst the great technological progresses of the 19th Century. Within the Navy there was fierce debate to embrace the change from sail power to steam power. The U.S. Navy slowly adopted steam power after being forced by Congress in 1834, and even then, proponents of traditional sail power still held out to have them incorporated amongst the first battleships during the 1890s, nearly six decades later Next, there was debate over metal ships versus the long established wooden ships. Then the debate shifted to battleships fleets versus carrier aviation fleets prior to World War II. The Navy has a history of resisting organizational change, not only from within, but from outside. Although bureaucracies are well documented to resist change, the Navy has shown to be keenly adept to this kind of resistance, stemming from organizational independence, a primary characteristic of the Navy. This was clearly shown during the debates that revolved around the National Security Act of 1947 and the Goldwater-Nichols Act of 1986. In both instances the Navy fiercely fought for to maintain its independence. Kenneth J Hagan and Michael T. McMaster, eds, *In Peace and War: Interpretations of American Naval History* (Westport, Conn: Praeger Security International, 2008), 55-56, 71, 137, 143-145, 182, 190-191; Roger W Barnett, *Navy Strategic Culture: Why the Navy Thinks Differently* (Annapolis, MD: Naval Institute Press, 2009), 13; Douglas T. Stuart, *Creating the National Security State: A History of the Law That Transformed America* (Princeton, N.J.: Princeton University Press, 2008), 77.

[364] James R. Locher III, *Victory On The Potomac The Goldwater-Nichols Act Unifies The Pentagon* (Texas A & M Univ Pr, 2004), 264.

[365] Amy B. Zegart, *Spying Blind: The CIA, the FBI, and the Origins of 9/11* (Princeton, N.J.: Princeton University Press, 2007), 55.

briefly that the legal authority and capability issues were not the only aspect affecting the Navy's operations. If tradition is important to the Navy, then it needs to look no further than at the previous navies that ruled the seas. They set an important precedent for the expected roles of the world's ruling Navy. Every major global Navy in its day fought wars and embraced constabulary roles to keep the oceans free, safe, and secure. A quote from a nineteenth-century British Admiral summarizes these roles:

> I don't think that we ever thought very much about War with a big W. We looked on the Navy more a world Police force than a warlike institution. We considered that our job was to safeguard law and order throughout the world – safeguard civilization, put fires out on shore, and act as guide philosopher and friend to the merchant ships of all nations.[366]

For the British Royal Navy, as the nearly undisputed masters of the sea for nearly two hundred years, it is hard to argue that it lost its fighting edge serving a dual-purpose role. In many ways, the 21st century so far mirrors the threats and challenges of the 19th century.[367] It is important for both traditional enemies and criminals to fear a Navy warship.

B. LAW ENFORCEMENT NEEDS TO BE A CRITICAL NAVY CAPABILITY

Are law enforcement roles a critical capability for the Navy? The answer is, yes, they should be. This is because in the maritime domain, there is no easy distinction between homeland and international, and we need to change the way we think about naval and maritime power. Adding law enforcement powers is an adaptive concept to meet the urgent needs of the 21st century maritime domain. Maritime law enforcement adds an innovative capability to transform our fleet into more capable and agile force to meet the vast array of threats on the maritime domain. As shown in Chapter V, without further research, this transformation can be done without tremendous cost to the operations and readiness of the force. Further data collection from the Navy in its MSO

366 Admiral Humphry Smith cited in Till, *Seapower*, 359.

367 Till, *Seapower*, 359; Murphy, "Suppression of Piracy and Maritime Terrorism: A Suitable Role for a Navy?," 24.

and specialized research is needed to uncover hard statistics and derive specific costs related to the Navy in MSO to determine its true effect on operations, fiscal costs, and operational readiness.

Maritime law enforcement is a critical capability that the Navy needs, but it is difficult to determine if it is *worth it*. The principal reason is that the Navy has not determined what capacity it has for maritime security missions. In other words, there is no threshold to determine if the costs are too high. "The Navy should determine its capacity for CIC," [368] arose as one of the of RAND's central issues in its *The Navy Role in Confronting Irregular Challenges* study. Because it is difficult to determine the right blend of maritime security and traditional warfare without strategic guidance, the worth it question is hard to answer. Answering this question is crucial in determining the Navy's willingness to embrace the law enforcement needs for maritime security.

C. RECOMMENDATION

There are multiple means available to expand the Navy's law enforcement capability and authority to platforms that may be involved with maritime security in the execution of its duty. It is important to address the options because each option can generate its own unique costs and benefits to the Navy's budget, operations, and readiness. For example, some option costs are heavily associated with personnel costs, while others have heavier costs associated with training requirements. Four basic options that are representative of the many choices available are: Coast Guard expansion, Naval Criminal Investigative Service expansion, Navy organic LE expansion, and hybrid expansion. These options are meant to encourage the reader to contemplate the different options available while analyzing the associated fiscal cost, operations, and readiness concerns. Determining what is the right combination of options is an extensive subject area and worthy of further research to determine which combination provides the most benefit with the least amount of cost to the Navy.

[368] A. Fritz, A. Freedman, and P. Haussman, *The Navy Role in Confronting Irregular Challenges*, 58.

1. Expand the Coast Guard Shiprider Programs

The author recommends the expansion of Coast Guard support (LEDETs/Navy and Coast Guard crew integration). Expanding Coast Guard personnel support to the Navy provides a highly plausible option in order to expand the Navy's law enforcement roles. If the Coast Guard is the best service to be conducting MSO, then they should be leading the charge abroad, in addition to the homeland. The growing demand for Coast Guard assets offers the most telling sign of the critical law enforcement capabilities that are needed. Particular benefits of expanding Coast Guard assets potentially are:

- carry law enforcement authorities, including the regulatory and customs enforcement authorities, no need to change existing laws
- provide tactical boarding capacity (may reduce VBSS staffing requirements), capability, and expertise
- allow Navy personnel to focus on traditional warfighting skills
- Coast Guard ship-rider process already established and well practiced through current use of LEDETs
- potentially draws Coast Guard and Navy operations closer through increased necessity for coordination and cooperation
- dual military/LE status preserves civil/military divide
- relationships and access with other domestic and foreign LEAs and Coast Guards

Some costs include:

- requires funding from DHS, DoD, Navy, or Congress to resource Coast Guard expansion
- requires increase in end-strength of Coast Guard personnel
- less investigatory and exploitive intelligence skills, as compared to NCIS

In this option, the Coast Guard provides the Navy authorities and capability at little or no costs to Navy personnel warfighting readiness and change in overall roles, therefore, appealing to the Navy's cultural sensitivities to law enforcement roles. It benefits operations because it provides the law enforcement expertise the Navy requires, and it draws the Coast Guard and Navy operations closer. The largest negative effect is

the fiscal costs will increase from the need for more Coast Guardsmen, depending on the number of personnel required to provide sufficient LE coverage for the Navy platforms. The costs may be offset somewhat by reducing the costs associated with reducing Navy's current VBSS training and equipments requirements. For example, a recent article in U.S. Naval Institutes *Proceedings* shows how the creation of specialized boarding teams can help reduce the cost burden to the Navy than the current setup.[369] This list is not exhaustive, but it merely highlights some basic costs and benefits for the Navy. In the end, the choice needs to a strategic one. If the military wants to constrict and focus on its primary goals, it needs to expand the capacity and reach of the Coast Guard and other maritime LEAs to provide the proper leverage that is needed.

2. At a Minimum, Remove the Navy's Law Enforcement Restrictions Abroad

The laws for the nation also need to be changed. While the homeland authorities may be a harder sell, there is no legitimate reason to continue the Navy's law enforcement restrictions abroad. Law Enforcement in the maritime domain is unique and fundamentally different than on land, and that precludes any justifiable reason to prevent the U.S. Navy from conducting maritime law enforcement. The vast oceans, its connectedness, limited jurisdictions, and its permeation to the all majority population centers are much more difficult to police than the territorial boundaries of land. The only powers able to govern the oceans are the naval units of countries and empires. The ocean's uniqueness has created the need for laws that differ from standard civil law enforcement rules, even for the civilly conscious United States. For example, under Title 14 USC, the U.S. Coast Guard does not require cause or warrants to perform search and seizure of vessels at sea, which has been reaffirmed by U.S. courts.[370] Naval forces, in general, do not pose the same threat to civil rights and potential military rule as armies do. If a naval military service poses a serious threat to American civil liberties, then what about the U.S. Coast Guard? It is a military service that is armed, trained, and ready for

[369] Kurt Albaugh and Jeremy Carriker, "Up Ladder," *Proceedings* 138, no.1 (January 2012), 61–62.

[370] Abel, "Not Fit for Sea Duty," 474–475.

combat duty, as has been the case for over 200 years. In fact, when U.S. Coast Guard forces are under the command of the U.S. Navy, they still maintain their Title 14 status to conduct law enforcement. The propriety of using the U.S. Coast Guard to enforce laws has never been questioned. Yet, the U.S. Navy technically cannot, even on the high seas. As Christopher Abel states, "This dichotomy seems curious, particularly given that no meaningful difference exists between the two services in this regard."[371] The real threat to civil liberties becomes truly difficult to apprehend. The false perception regarding Navy involvement civil affairs violations must be voiced, in order to remove the PCA screen the Navy uses to avoid LE missions.

While the Navy can continue to leave the Coast Guard as the primary agency for maritime security operations and law enforcement, it does not relieve the Navy of the responsibility to gain a better understanding of the nature of the threat and determine ways that it can help maritime security. The greatest potential to solve the problem of Navy LE is the need for a shift in thinking to be further in line with the strategic priorities as laid out in U.S. naval doctrine. First, it needs to take place within the U.S. Navy. This can only happen, if the U.S. Navy is forced to directly participate in maritime law enforcement. Only after the U.S. Navy is forced to conduct of LE efforts needed in maritime security, can the discussion move forward to reduce the other restricting barriers. The only true legal barrier to U.S. Navy law enforcement lies with easily changeable DoD policies, which makes it a very thin barrier. But, it is heavily bolstered by those holding on to traditional thinking. Therefore, as long as the U.S. Navy continues to advocate the limitations it imposes on itself, DoD policy cannot change.

If the U.S. Navy no longer operationally supports the restrictions placed by DODD 5525.5(c) and SECNAVINST 5820.7C, pressure can be placed on the SECDEF and SECNAV to utilize the exceptions to policy for mission sets and operations that require LE measures. The change in thinking will also permeate into training and operational doctrine. This can include the participation or adoption of LE training programs, like those offered by the U.S. Coast Guard, instead of ad hoc and inconsistent

[371] Abel, "Not Fit for Sea Duty," 478.

training that crews receive now. An asset properly trained to handle nontraditional threats will be more effective in situations that can potentially arise than one who is not.

The potential exists to seize the opportunity to get the laws and policies changed to reduce the law enforcement restrictions on the Navy. Similar to the congressional mandates that forced the Navy to take greater responsibility in supporting law enforcement agencies in the 1980s, a recent call by a Congressional leader is asking what authorities the Navy needs to better meet its missions.[372]

Together, the Navy and the Coast Guard makeup the finest naval institution in the world. Properly authorized and organized, they become the most compelling force to help overcome not only traditional threats, but the increasingly frequent and dangerous maritime security threats. If the Navy acquires law enforcement roles, then the maritime global commons seas will be more secure.

[372] *Institutionalizing Irregular Warfare Capabilities*, 36.

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